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ATTORNEYS AND ACCOUNTANTS

IN A CHANGING ENVIRONMENT IN SOUTH AFRICA: #b

THE CASE FOR MULTIDISCIPLINARY PRACTICE #c

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This Report is not confidential. It may be used freely by the Graduate School of Business.

We certify that the Report is our own work and that all references used are reported.

Signed by candidate

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Signed by candidate

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A B S T R A C T

Thirty years ago, an individual faced with a particularly complex tax problem would have turned to his lawyer. Ten years ago, he would have turned to his accountant. Today, he may even turn to his bank manager. In 1986, we see lawyers and accountants competing with the merchant banks, the trust companies, insurance companies and other financial institutions, not only in the tax areas but many others as well. These two disciplines, for so long accorded the dignity and status of professionals, today see their traditional domains being increasingly eroded. Accountants, themselves threatened by the financial institutions, are threatening the lawyers. The lawyers find themselves attacked on all fronts. Can these two professions continue to regard themselves as a "calling", or should they be adopting the stance of aggressive businessmen responding to negative environmental stimuli?

In this report we highlight the threats facing the two professions: competition [primarily], inflation, technology, changing client attitudes and survival in a weakened South African economy. These threats, coupled to the extortionate cost of litigation and the "brain drain", are presented as arguments in favour of the professions being forced to consider what strategic response to adopt. We also examine the distinct threats faced by the professions due to their lack of marketing. Having interviewed various practitioners to obtain their viewpoints, we look at various strategic options open to the professions. The areas of synergy are critically appraised, and then we examine the theoretical as well as practical advantages and disadvantages of mergers and acquisitions. The theory applicable to mergers and acquisitions is shown to be particularly

apposite to the association of accountants and lawyers in a Multidisciplinary Practice.

Various trends are also highlighted in the report. The most important of these is the phenomenal growth in size and scope of services of the accounting firms, and the trend worldwide towards closer association of the two professions. The threats outlined above are also presented as a trend. We show how the accountants have responded, to a limited extent, to market forces by setting up service companies, but the lawyers, even though under greater threat than the accountants, are shown to have been very slow in their response. In this respect the differing approaches to the needs of the marketplace by the two professions are highlighted.

Having highlighted the areas of synergy, the strategic advantages and disadvantages of associating, and the viewpoints of the various practitioners, we conclude that the best response to the threats facing the two professions is to form a united front: a Multidisciplinary Practice. By Multidisciplinary Practice we mean the creation of a third entity, in the form of a limited liability company, by a law firm and accounting firm. This multidisciplinary practice will thus consist of practitioners of each discipline and will, through its linkage to the two firms, be accorded professional status. It will be bound by the Codes of Conduct of the professions.

These Codes of Conduct however, are shown to have a distinct negative impact on the professions. They curtail the professions' activities in the marketplace, eg they are unable to advertise their services. We therefore conclude that these constraints have to be lifted to allow the

multidisciplinary practice to compete on an equal footing with the financial institutions. The constraints are shown, in many respects, to be outmoded today. The underlying principles of the constraints are presented as being virtually identical in both professions, although lawyers are limited to a greater degree than accountants.

In the final analysis then: the report highlights the historical trends of lawyers and accountants, and the inroads on their scope of services made by various institutions. Various strategic options are examined, and we conclude that the synergistic benefits and advantages to be gained by a Multidisciplinary Practice outweigh the problems and disadvantages of association. A Multidisciplinary Practice is thus presented as a viable and desirable entity in the South African marketplace.

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CHAPTER 1

INTRODUCTION

1.1 BACKGROUND

Multidisciplinary Practice per se does not exist as a form of practice for lawyers and accountants in South Africa. In the context of this report Multidisciplinary Practice means the joining together of practising practitioners from both disciplines to form a practice which provides an integrated service to the client encompassing the scopes of interest of both professions. The professions are presently subject to various legal and ethical constraints preventing any formal association.

The professions are however by their nature in many instances complementary. It is not unusual, with particular reference to commercial matters, for the interests of a client to have both legal and accounting implications. Further to this the scope of services of each profession actually overlap in certain areas. Within the field of tax it is debatable which profession is better qualified to provide the best service. Legal skills are required for statutory interpretation whereas accounting skills are required to give numerate interpretation to the provisions of the Income Tax Act.

In consequence of the synergy which exists between the services which are offered certain firms in South Africa are currently considering and others are presently engaged in informal cross-referencing and intra-professional referrals. It is therefore submitted that a formally structured Multidisciplinary Practice is a logical progression.

1.2 OBJECTIVES OF THE REPORT.

[1] To investigate the historical development and current structures of practice for attorneys and accountants to identify whether any precedents or trends exist which support Multidisciplinary Practice. Perceived future trends which will be of influence are considered.

[2] To identify the legal and ethical constraints to association for each profession, the underlying logic of the constraints, whether they are operative in practice and whether the concept of Multi-disciplinary Practice violates all or any of the premises of the constraints.

[3] To identify the areas of synergy between attorneys and accountants and the degree to which the synergy exists.

[4] To identify the potential benefits for the professions and the client of an integrated service.

[5] To identify the potential disadvantages or problems for the professions and the client associated with an integrated service. To determine whether the disadvantages pose a substantial threat to the concept of Multidisciplinary Practice.

[6] To determine the current state of marketing in each profession. To further determine whether Multidisciplinary Practice would, by its nature, demand a distinct marketing approach.

[7] Finally, to determine whether Multidisciplinary Practice is a viable concept for the professions concerned within the South African environment and in what form or forms its valid existence is perceived.

1.3 SCOPE AND LIMITATION OF THE REPORT

The report considers Multidisciplinary Practice as it concerns duly qualified practising accountants and attorneys in South Africa. The term Multidisciplinary Practice is extended to cover not only the merging of an accounting and legal practice to form a structurally integrated practice but also the provision of a multidisciplinary service. Such a service may be provided without formal integration by the combination of attorneys and accountants for specific projects on an ad hoc basis and the employment of practitioners with complimentary professional skills by currently existing practices.

The perceived advantages and disadvantages of Multidisciplinary Practice are considered both from the practising practitioners' and the clients' points of view.

The objective of this report is not to conduct market research into the views of the professions and their clients. The diverse views of practitioners are a result of a combination of commercial, legal and ethical factors which do not lend themselves to quantitative analysis. The purpose of eliciting opinion is to isolate the important factors and ascribe relative importance to them in the context of the threats and opportunities which face each profession.

An investigation into the quantifiable profitability of Multi-disciplinary Practice is beyond the scope of this report. Profitability is however considered in general terms with regard to whether a Multidisciplinary Practice would provide a competitive advantage, an increased scope of service or decrease the costs of providing a professional service. Further factors relating to political and economic uncertainty insofar as they may affect the viability of such a practice will not be considered.

1.4 OUTLINE OF THE REPORT.

Chapter 1 of the report - the subject is introduced and the scope, limitations and objectives are stated. The sources of information and the research procedure are explained.

Chapter 2 places the investigation in context with a general overview of the historical development and currently existing forms of practice for each profession. Important professional trends are highlighted.

In Chapter 3, the provisions of the Attorneys and Accountants Acts insofar as they pertain to the topic, are investigated. Further to this the operative constraints to association contained within the rules of conduct determined by the professional governing bodies are discussed. The ethics of each profession are considered.

Chapter 4 discusses the areas of synergy between the professions and the extent to which it exists.

Chapter 5 outlines the theoretical advantages of diversification, mergers and acquisitions for the professions. The chapter further considers the perceived advantages to the professions and the client of an integrated practice.

In Chapter 6 the perceived problems and/or disadvantages of integration are discussed. Proposed means of overcoming the problems are suggested.

Chapter 7 investigates the relevance of marketing to a Multidisciplinary Practice. The presently prevailing attitudes of the governing bodies and the restrictions that they impose on advertising in general for the professions are determined. The validity of these constraints is investigated.

A summary as well as recommendations and conclusions are given in Chapter 8.

1.5 RESEARCH METHODOLOGY.

This report is considered to be qualitative descriptive research. The data collected is used for the purposes of generalisation, problem identification and prediction. The task is to evaluate the validity of a particular form of association [Multidisciplinary Practice] as a form of practice for practising Accountants and Attorneys in South Africa. The research methodology employed is designed to gather information which may be used to identify relevant factors in the following contexts:

[1] Historical patterns and trends of practice for each profession in South Africa. Trends in the general and professional environments in other countries are considered where pertinent.

[2] The legal and ethical environment of practice for each profession.

[3] The theoretical advantages of integrating professional services.

[4] The perceptions of practising practitioners.

To our knowledge, the topic of formal multidisciplinary integration between practising attorneys and accountants has not been hitherto researched in South Africa. Further to this, a computer-based literature search [detailed below] failed to identify any published research of the topic overseas.

1.5.1 Sources of Information.

1.5.1.1 Primary sources.

[a] Background Interviews:

Interviews were conducted with leading practitioners in the Achitecture, Engineering and Quantity Surveying professions in Johannesburg and Pretoria. The purpose was to elicit background information regarding the nature of Multidisciplinary Practice which exists in these allied professions. This information was used to structure the nature of questions used in the preliminary interviews.

[b] Personal Interviews:

These were conducted with practising practitioners and members of the governing bodies of each profession in Johannesburg, Pretoria and Cape Town. Preliminary interviews were structured on an open-ended question basis to elicit general opinion and identify the relevant areas of concern to the topic. [A sample of the preliminary questionnaire is provided in Appendix 1]. Further interviews were conducted to elicit opinion regarding particular areas of relevance formerly identified in the preliminary interviews. These latter interviews were conducted with the use of a dictaphone to enable typed transcriptions to be made. This procedure was employed to accurately record the

nuances of professional argument and guard against misquotation. It must be noted that quoted opinion of any member of any governing body reflects the personal opinion of the member concerned. The topic of Multidisciplinary Practice had not been considered for vote or concensus by any governing body at the time the research was conducted. To our knowledge this is still the case. [The persons interviewed are listed at the end of each chapter as they pertain to that chapter].

[c] Correspondence Interviews:

These were conducted by way of a memorandum documenting opinion expressed in the preliminary interviews with practitioners above. The addressee practitioners were asked to comment and reply by way of a memorandum. Sixty correspondence memoranda were sent to practitioners in each discipline in Johannesburg, Durban, Bloemfontein and various smaller centres. The purpose was to determine whether opinions differed as a function of geographical location or size of practice. An 18% response rate was achieved. Where these responses highlighted new information they are referred to in the text. [A sample of the memorandum used is attached as Appendix 2].

[d] International Correspondence:

Letters were sent to the following legal governing bodies:

[1] The American and Canadian Bar Associations;

[2] The Ethics and Guidance Department of the English Law Society;

[3] The nine Australian State Law Societies.

Mr Phillip Strachan, President of the Cape Society of Chartered Accountants, kindly addressed letters to the following accounting governing bodies on our behalf:

[1] The Institute of Chartered Accountants of Zimbabwe;

[2] The American Institute of Certified Public Accountants;

[3] The Institute of Chartered Accountants of Scotland;

[4] The Institute of Chartered Accountants in England and Wales;

[5] The Australian Society of Accountants;

[6] The Institute of Chartered Accountants in Australia.

The purpose of the correspondence was to elicit information regarding the existence or otherwise of Multidisciplinary Practice overseas. [Further information requested is presented in the sample letter - Appendix 3]. Information received from the above addressees is quoted in the text and at the end of the chapter to which it pertains.

[d] Telephonic Interviews:

These were conducted with senior spokesmen from Webber Wentzel, Deloitte Haskins & Sells, and Shepstone & Wylie

with regard to the recent formation of Intertax [Pty]Ltd. Such persons were reticent about disclosing any strategic information and requested that certain information disclosed be kept confidential. Therefore only general references are made to this entity in the text.

1.5.1.2 Secondary Sources:

[a] Desk research:

A literature search of books, journals and other publications was conducted at the following institutions

[1] The Library of the Graduate School of Business, University of Cape Town;
[2] Jagger Library, University of Cape Town;
[3] The Law and Accounting Libraries of the Universities of Cape Town, the Witwatersrand and Natal [Durban].

Publications are listed at the end of each chapter to which they pertain.

[b] Dialog Information Services Literary Search:

A comprehensive worldwide database literary search was conducted through the Jagger Library [as above] to identify literature overseas pertaining to Multidisciplinary Practice. The search which comprised 2,932,700 records

identified no reference to the topic in question. A list of the databases investigated is provided in Appendix 4.

[c] Legislation:

Relevant Acts of Parliament and Rules of Misconduct as laid down by the professional governing bodies were interpreted using our combined legal skills, aided by literary reference and personal interviews. Such legislation and interpretive reference is quoted at the end of Chapters 3 and 7.

CHAPTER 2

THE HISTORICAL DEVELOPMENT, CURRENTLY EXISTING STRUCTURES, AND FUTURE PROFILE OF THE PROFESSIONS

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CHAPTER 2

THE HISTORICAL DEVELOPMENT, CURRENTLY EXISTING STRUCTURES, AND FUTURE PROFILE OF THE PROFESSIONS

2.1 OBJECTIVES OF THE CHAPTER

[a] To trace the historical development of both professions from early times, and identify what trends have prevailed;

[b] To give a broad overview of the two professions as they stand in South Africa today;

[c] To briefly examine the trends in England, America and Australia toward Multidisciplinary Practice and to examine to what extent these trends could impact on South African developments;

[d] To trace the future trends and profile of the two professions and identify whether any trends towards a Multidisciplinary Practice exist.

2.2 INTRODUCTION

There are pre-eminently three professions upon whose ethics as well as upon whose skill modern society depends: Law, Medicine and Accountancy. [Stevens, The Big Eight, 1981 : 27, quoting from Fortune Magazine editorial comment]. Apart from the "oldest profession known to mankind", these three also have very strong roots in ancient times, and are as old as mankind itself. Before embarking on an analysis of whether a Multidisciplinary Practice is a viable or desirable concept in South Africa, it is thus necessary to trace the roots of the accounting and legal professions and see to what extent the two have developed in the past. Both the legal and accounting professions are governed by strict rules of conduct [see Chapter 3], and these can be traced back to the historical development of the two professions. These strong links with history and the classics also lead to the "shield of conservatism" referred to by Mr de Beer [Interview July, 1986] as well as the "professional jealousy" between the two professions alluded to by Prof. Kritzinger [Interview November, 1986] and Mr Clegg [Interview June, 1986]. This conservatism and professional jealousy present fundamental problems to the formation of a Multidisciplinary Practice, and will be discussed more fully in Chapter 6 [Problems of Integration].

2.3 BACKGROUND AND DEVELOPMENT OF THE LEGAL PROFESSION

The profession of attorney in South Africa can be traced back to the Roman law, Roman Dutch law and English law. This vast and fascinating history can only be briefly summarised here. However, those who wish to study the subject in more detail can refer to the references at the end of this Chapter.

2.3.1 The Roman Influence

Roman law as a system of law was developed to a remarkably advanced degree by custom, jurists and legislation in Rome, over a period of time approximately one thousand years prior to the sixth century. Under this system an individual wishing to prosecute or defend an action, did so by appearing in person. This changed over time however, with the evolution of individuals known as procurators. These individuals could represent others, either generally, or in relation to a particular case, the representation being mandated by the other party. They were, essentially, agents acting on behalf of the other party. These procurators did not have to have any particular legal knowledge; thus any person could appear on behalf of another and prosecute or defend his case. It is to this procurator, this agent authorised to act on behalf of his principal, that the attorney of today can be traced. The office of advocate also existed under this old system: he advised his clients of their rights, drafted the pleadings and made speeches on behalf of his client. The advocate did require special qualifications. There also existed in this old Roman system the progmaticus, whose function was primarily to

"back up" the advocates. They thus were skilled in matters of law, and assisted the advocates and orators with the preparation of their speeches. They are probably more closely linked to the modern day attorney than the procurator who was a mere business agent.

The principles of Roman law have formed the basis of nearly all European legal systems. In the Netherlands when it became clear that local Dutch laws were not sufficiently developed to suit the conditions of the country, the more detailed principles of the Roman law were turned to and applied by the rulers, by the courts and by the people. [Wessels, 1908 : 126]. In the course of time, the greater portion of Roman law was adopted, and the amalgamation of the two systems resulted in the Roman-Dutch law. It was a combination of the best principles in each system.

2.3.2 The Roman-Dutch Influence

In the early Roman-Dutch law legal representation by one person of another was not recognised [Van Zyl, 1931]. Later on however the courts themselves appointed "taalmennen" [interpreters of languages] or "woordhouders" [keepers of words] to assist litigants by seeing to the pleadings and speaking on behalf of their principals. Then in 1450 the Court of Holland stipulated that all litigants must be represented by "procureurs" ie men qualified in the law and admitted to practice. The separation of office of advocate and procureur was maintained as in the Roman Law. The duties of the attorneys were to assist the advocates and to make the cases "ripe for hearing" [van der Linden - Judicieele Praktycq, 1794:187 and 3211]. If the legal

and ethical constraints pertaining to attorneys today are examined, [discussed in Chapter 3] the following Plakaat of Charles V of 1551 is particularly apposite:

> "No-one shall in future be admitted as an advocate or an attorney to practice daily in court unless he has the necessary qualification and has obtained permission from the court to practice there and has also taken the oaths that he will show due honour, reverence and dignity, at all times, to the president and the court; that he will not act in any case which he knows to be unjust, whether it appears to him so at the beginning or later on; that he will honestly and faithfully serve his client; that he will be satisfied with the taxation [of his costs] by the court; that he will not cause unnecessary or improper delay; that he will make no agreement to share in the results of the actions; and generally that he will conduct himself as a good and faithful advocate or attorney". [van Zyl, 1931 : 3].

2.3.3 The English influence

Turning to the position in England, the earliest attorneys were simple non-professional agents representing their principals in legal matters. The Statute of Merton in 1235 authorised general representation by attorneys in local courts for litigation, whereas previously

litigants had had to appear in person. A professional charter of attorneys began to be formed in the 15th century, and in 1402 a Statute addressed the problem of the great number of attorneys "ignorant and not learned in the law". This Statute then required all candidates for admission to the roll to be examined by the Justices. This particular requirement was enacted in another Statute in 1605 [Jenks, : 1928].

2.3.4 The developments in South Africa itself

The influences of the above systems on South African attorneys can now be examined. On 7 April 1652 Jan van Riebeeck arrived in Table Bay, bringing with him the law of Holland. Thus Roman-Dutch law became the law of the Cape and the basis of the South African legal system. Thus the law applicable in Holland in 1652, as well as legal treatises written from 1652 to 1806 have been accepted as authority in South Africa. This applies also to the decisions of the Dutch courts. [Wessels, 1908 : 237 and 356]. Between 1652 and 1795 [when South Africa was controlled by the Dutch East India Company] practitioners at the Cape were advocates, attorneys and notaries. They were authorised to practice by the Raad van Justisie. Until 1803, attorneys were not required to be professionally qualified.

In 1806, the Cape was ceded to Britain, and thus the English law began to assert itself over the Roman-Dutch law of the Cape. However, the existing system of law was preserved, as under the Articles of Capitulation, 18th January 1806, it was provided that "the burghers and inhabitants shall preserve all their rights and privileges which they enjoyed hitherto". Thus the Roman-Dutch law was kept alive, although

British rule did lead to great changes in the legal system. In 1827 the Charter of Justice established courts based on the British concepts of evidence and procedure [civil and criminal] in the Cape. And the British administration appointed British judges to preside over the courts in the Cape, and because these judges were trained in England they tended to base their decisions on English law. It is thus understandable that in terms of the Charter of Justice of 1832 attorneys had to be qualified in Britain, or else receive tuition from advocates or attorneys already admitted in the Cape. In 1877, five years articles and a practical examination were the prerequisites for admission as an attorney, but in 1883 Act 27 in the Cape introduced a law examination, which, once passed, reduced the period of articles to three years. This then was the position in the Cape until 1934, when the Attorneys, Notaries and Conveyancers Admission Act was enacted, governing the requirements of admission throughout South Africa. This Act was in turn replaced by the Attorneys Act 53 of 1979, which in Chapter 1 lays down the requirements for admission of practitioners, again applicable throughout South Africa. It is not necessary to examine these requirements here: those who wish to pursue the matter are referred to the Act itself - Attorneys Act 53 of 1979 - Sections 1 to 24 and 56 - 77.

The word "attorney" means a person appointed to act for another, and has its origin in French: atorné is the past participle of atorner, which means to transfer, turn, assign or appoint. Attorney is today the only recognised term referred to by the Attorneys Act; thus

members of the profession rarely refer to themselves as solicitors or attorneys-at-law which was fairly common prior to 1979.

Having traced the origins of the profession, albeit very briefly, the structure as it exists today can now be examined. The legal profession in South Africa is divided into two main classes whose functions are distinct: advocates and attorneys. There are important differences in their rights and duties, and the chief distinction between the two is that the advocates practise at the Supreme Court and the attorneys at the Magistrates' Courts. In the context of a multidisciplinary practice, only attorneys are relevant, and only attorneys will be referred to in this discussion.

2.3.5 The position today in South Africa

The attorneys' profession in South Africa today consists of duly qualified practitioners serving their clients over a diverse spread of interests. The size of practices, too, varies; from the one-man show common in the platteland and small towns, to the large 20-plus partnerships common in the larger cities like Johannesburg and Cape Town. It is not uncommon for some of these larger firms, especially those specialising in patent law, to include in their practice members of various other professions eg engineering. The particular constraints, legal and ethical, on incorporating into other professions are fully dealt with in Chapter 3.

The scope of services and skills offered differs from practice to practice, with the larger firms through their size and ability to attract professionals specialising in a whole diversity of fields able to offer a far wider range of services than the one-man practice. These practitioners are all subject to the strict codes of conduct discussed in Chapter 3. However, reference must also be made to non-practising attorneys. These are practitioners who work eg as legal advisers to a company, and thus have to remove themselves from the Roll of Attorneys. They thus offer their acquired knowledge and skills to their employer, but have none of the privileges which a practising attorney has, and are also not subject to all the constraints which a practising attorney is subject to. They are also unable to appear in court.

The four provinces have their own law societies with their own rules governing their members. There exists also the Association of Law Societies, an idea which was originally mooted in 1907 when the four law societies came together to discuss and decide upon common problems. The Association of Law Societies has an executive committee which consists of the four presidents of the provincial societies, and they deal with all matters of urgency, and implement decisions of the council. All decisions of the council and of the executive committee are binding on the societies unless the representative of a society reserves a point for ratification by his society. The association is not only actively involved in the profession as such, but is also concerned with legal education, and international trends. Otherwise the four provincial societies retain their autonomy.

2.3.6 Significant trends in the development of the legal profession

Lawyers are by nature a conservative breed, with the South African profession being no exception. In fact, when the trends overseas are examined, it would appear as if the South African profession is far more conservative and loathe to lose its links with the past than its overseas counterpart. It can be seen from the discussion above, that from Roman times right through to the present, the lawyer, because of his position of representing a client in matters to do with the law, has built up a unique position of trust in relation to his client. He has always been expected to act in his client's best interests and observe strict confidentiality. According to Mr Prismin [Interview:September, 1986], this ethic of confidentiality between attorney and client is stricter even than as between priest and confessor. The ethics of the profession thus date back to early Roman and Roman-Dutch times, exemplified by the attitude which prevails today that the attorney must serve the profession and not be guided by profit motives. A further trend in the legal profession which dates back to the earliest times, is what Mr Prismin [Interview September, 1986] refers to as the "Rolls Royce system of justice": the strict separation of attorneys and advocates [the Bar and the Side Bar]. When one examines these two factors viz separation of Bar and Side Bar, and the ethics versus profit motive, the question must be asked whether the South African legal system today can afford to maintain them. Prof.Kritzinger [Interview:November, 1986] certainly does not think so. In his opinion, because of the fact that law was part of university education before any of the other professions, lawyers have become overly snobbish. In addition he feels that because in South Africa so many lawyers are Members of Parliament who protect their profession, lawyers in South Africa have far too long

been complacent about the needs of the marketplace. He is backed up in this opinion by Mr Clegg [Interview:June, 1986] who also sees professional jealousy as being much stronger on the part of the lawyers than accountants. Prof. Kritzinger feels that because of the immense cost of litigation today, the legal profession as it presently exists cannot and will not survive. They will have to do something eg introduce contingency fees, to remain viable. But as long as the legal profession considers itself as a "calling", and not a "business" Prof. Kritzinger feels they are doomed.

Mr Prismin [Interview:November, 1986] agrees whole-heartedly with Prof. Kritzinger that it has been a tragic trend in South Africa that the cost of litigation has been priced way out of the reach of the average man-in-the-street. "It is indeed true that the law is only there to serve the extremely rich or extremely poor". Mr Prismin is thus of the opinion that lawyers cannot any longer operate in the belief that a legal firm can be run without any consideration of commercial matters. That belief, he states, is now outdated. He goes on further to state that the internal ethics of the profession strive towards justice and yet a cynicism has grown up within the profession that the doors of justice are now entirely closed to the middle classes. Litigation, which should really be the method of preserving one's rights is now something beyond the financial competence of the ordinary litigant. The profession is thus lagging behind the goals which its internal ethics state it should achieve. However, Mr Prismin disagrees with Prof. Kritzinger that the profession as it exists is doomed. He feels the profession is not pricing itself out of the market at all, as a market for legal services does exist and many people are making a lot of money in that

market. With respect, we feel that that response begs the question. Merely because a market for the extremely rich exists does not mean to say it is a desirable or maintainable state of affairs. The Small Claims Courts and Legal Resources Clinic and Legal Aid Board merely skim the surface of the problem. We respectfully agree with Prof. Kritzinger that the legal profession will have to change its present structure and break away from the "Rolls Royce" system of justice in order to survive.

A further significant trend in the legal profession has been in the inroads made on traditional legal services by non-lawyers eg accountants, banks, investment companies, trust companies, and insurance companies. This trend represents a distinct threat to the profession, and coupled to the threat of costly litigation, could well be a strong force for change in the profession. About twenty-five to thirty years ago, lawyers lost their tax work to the accountants, and there is still much bitterness in the profession over this. Lawyers feel that tax is essentially interpretation of a Statute, whereas accountants feel that tax is essentially a numerate skill. We respectfully submit that tax combines both skills and this is just one area where a Multidisciplinary Practice would seem to be desirable.

Other trends impacting on the legal profession have been the move towards a greater regulated society in South Africa, leading to the need for broadened scope of services offered by lawyers. Recent amendments in the Income Tax Act grant the Receiver of Revenue the right to report a practitioner to his professional body if the Receiver is in fact satisfied that steps have been taken to avoid tax. In order to do that it would mean the scrutiny of the advice

given by the practitioner and this entails an inroad on attorney/ client confidence. Thus there appears to be a trend in South Africa towards the narrowing of professional privilege.

It can be seen from the above trends that no direct precedent exists for the formation of a Multidisciplinary Practice. However, more recent developments have changed this picture entirely. Mr Wilson [Interview:September, 1986] states that most, if not all legal firms have a very close association with accounting firms, and this trend started in the late 1960's. This trend has now run its logical course, and an article in the Financial Mail [October 3, 1986] reports that Webber Wentzel, probably South Africa's largest firm of attorneys, has formed a joint multidisciplinary company with Deloitte, Haskins & Sells, one of the Big Eight accounting firms. Webber Wentzel has further signed an informal deal with Shepstone & Wylie, South Africa's leading firm in maritime law and international trading, providing clients with access to offices in Durban, the Witwatersrand, Pietermaritzburg, London, Luxembourg and other European centres. Webber Wentzel practices in commercial and corporate law with detail in areas such as mining and minerals. This latest move represents the growing trend towards internationalism by South African law firms wishing to service their clients overseas. It also marks Webber Wentzel's aggression in the financial services market, motivated by today's increasingly competitive business environment. Because this development is so recent, it is too early to highlight any particular problems or whether this is the start of the Multidisciplinary Practice in South Africa. We held telephonic discussions with senior spokesmen from all three firms who obviously were loathe to part with

too much information due to strategic reasons and possible responses by competitors. However the following information was obtained. Webber Wentzel and Deloitte's have formed a limited liability company called Intertax, offering specialised South African and International tax services. The legal and ethical constraints described in Chapter 3 have been circumvented by the fact that Deloitte's and Webber Wentzel are shareholders, paying a salary to a fulltime management team. There are thus no rules being broken, and no problems with potential prejudice or breach of confidentiality are foreseen. It is felt that an expanded as well as more specialised service is now being offered to clients as eg the Deloitte's tax expert alone might not be the best in every area, but when his knowledge is combined with that of the Webber Wentzel expert, it must be improved. It is felt that the input of the two disciplines, law and accounting, definitely offers a superior service. Both firms saw a need for such a service, both from the points of view of the professions as well as the clients themselves. The opinion of clients was canvassed prior to incorporation. The advantage to the clients is perceived as being one of a better service and the convenience of having a "one-stop shop", but it is felt that cost reductions to the client will be minimal. Displaying a commendable businesslike, and compared to the general attitude amongst many of the practitioners in the two professions, enlightened approach, the spokesmen were unanimous that they would not have entered into such a deal unless it was profitable. They all foresaw themselves as being in business. This represents a trend away from the thinking so prevalent amongst professionals that a

profession is a "calling". The spokesmen also saw such an entity as giving them a competitive advantage, and when questioned whether such an advantage would not be unethical, expressed the opinion that such thinking is outmoded. The view was also expressed that because Intertax is linked to the big names of Webber Wentzel and Deloitte, Haskins & Sells, it is being looked after in terms of ethics, quality of work and professionalism. Thus Intertax is seen to be far more professional and ethical than other firms not linked to accounting or legal firms. This point is discussed as a desirable factor in Multidisciplinary Practices in Chapter 3. Marketing of Intertax is being done by word of mouth, as restraints peculiar to accountants and lawyers do apply when it comes to marketing of their services [See Chapter 7]. Spokesmen from Deloitte's and Webber Wentzel both foresaw Intertax as being merely the start of a trend towards Multidisciplinary Practices in South Africa. With the professional skills market becoming more and more competitive, influenced to a large extent by the "brain drain", it is felt that the two professions will have to pull together to solve specialised situations. The desire of people to offer these specialised skills will increase with market forces, and thus a greater inferface will be necessary between law firms and accounting firms. This point will be returned to when discussing future trends at the end of this Chapter. The thinking behind the formal association between Webber Wentzel and Shepstone & Wylie also represents an enlightened approach for the South African legal profession. Spokesmen from the two firms feel it is an entirely logical link-up offering greater access to legal work to both firms both in and outside South Africa. But the most important trend highlighted is the desire to internationalise and offer services to

South African clients overseas. Again, a competitive advantage is perceived, offering an expanded service with a greater variety of expertise available to clients through the overlap of the two firms.

Thus to summarise the position in the legal profession so far: strong historical links to the ancient Roman, Roman-Dutch and English legal systems have led to a very conservative profession governed by strict ethical constraints. However, inroads into legal work by non-lawyers coupled to the exhorbitant cost of litigation do present great threats to the profession as it currently exists. Unfortunately lawyers have been slow to respond, and it is only very recent developments which point to a realisation that lawyers need to do everything possible to survive economically in the marketplace. The association of Webber Wentzel and Deloitte's to form Intertax is indicative of this enlightened and more aggressive thinking, as is the association of Webber Wentzel and Shepstone & Wylie. And, as we will argue at the end of this Chapter, forming a Multidisciplinary Practice with accountants is the best option facing lawyers who wish to survive in the marketplace.

2.4 BACKGROUND AND DEVELOPMENT OF THE ACCOUNTING PROFESSION

Accounting is the fundamental basis of quantitative financial information. The traditional language of accounting has always been arithmetic, but modern developments have encompassed many different branches of mathematics. Thus areas such as statistical quality control and operations research and analysis have meant that accountants have been more involved in mathematics, statistics and probability theories. In addition, the development of trends towards electronic data processing has meant that accounting records are stored and retrieved by utilising machines, thus requiring the accountant to have some mathematical and computing expertise. These developments have had a significant impact on the profession, affecting the education and training of the accountant, and will no doubt continue to have a marked effect in the future. The past development of the profession can now be traced.

2.4.1 Early developments

Accounting as a tool can be traced back to the Ancient Greeks. Not only accounting records but also income tax computations can be found at the Palace of Nestor in Ancient Greece. This reflects mankind's need to know and keep records of his inventories and his stocks. However accounting or auditing as we know it is both young and unique. Most of the advances can be linked to chaos in business leading to a need for the institution of a measure of order. Thus for example laws to safeguard shareholders were passed in Great Britain in the 1850's as a result of the industrial revolution. The

profession's development worldwide has been significantly influenced by development in England. In 1894 the Institute of Accountants and Auditors in the South African Republic was established in the Transvaal. This was the first organised body of accountants in South Africa, and the founder members were almost exclusively members of the Institute of Chartered Accountants in England and Wales, which had been established in 1880, and of the Society of Incorporated Accountants and Auditors, which had been established in 1885. Then in 1895 this Society of Incorporated Accountants and Auditors set up a branch in South Africa. Thus these two societies helped to establish and influence the advancement of the profession in South Africa.

A further development was the establishment of the Institute of Chartered Accountants in South Africa in 1902, followed by the Transvaal Society of Accountants in 1904, the Society of Accountants in the Cape Colony in 1907, the Society of Accountants and Auditors in the Orange River Colony in 1908 and the Natal Society of Accountants in 1909. These four provincial societies, in furtherance of their goal of unification of the profession, then established the South African Accountants Societies General Examining Board in 1921. This provided for uniform conditions of examinations, admission and the serving of articles. This body, the General Examining Board, was probably the first national body pertaining to accountants in the Republic.

The next significant development was the Chartered Accountants Designation [Private] Act of 1927 which conferred on members of the four provincial societies the exclusive right to use the designation

"Chartered Accountant [South Africa]". The word "Chartered" can be traced back to the Royal Charters granted in the nineteenth century to the Scottish, English and Irish Institutes. However through the passage of time its meaning has become wider, and today people identify the "chartered accountant" with a very high standard of accounting qualification throughout the world.

In 1946 the Joint Council of Societies of Chartered Accountants of South Africa was established, and was renamed the National Council of Chartered Accountants [SA] in 1966. The Council was formed to deal with all professional matters at a national level.

In November 1951 the Public Accountants and Auditors Act 51 of 1951 was enacted, providing, inter alia, for the establishment of a Register of Public Accountants and Auditors who were entitled to engage in public practice and to describe themselves as registered accountants and auditors. The Act also provided for the establishment of the Public Accountants' and Auditors' Board, the registration and control of articled clerks, and the conduct of examinations. The Act further granted the right to all who passed the qualifying examination to be admitted to one of the provincial societies and to acquire the right to the designation "Chartered Accountant [SA]".

In 1956 the Public Accountants' and Auditors' Board took over the functions of the General Examining Board, which then ceased to exist. The universities in South Africa also took over some of its functions, providing the education necessary to attain the Certificate in the Theory of Accountancy which is a prerequisite for the qualifying

examination set by the Public Accountants' and Auditors' Board.

The National Council of Chartered Accountants [SA] is a member of the International Accounting Standards Committee, which was established in 1973; as well as the International Federation of Accountants which was established in 1977. This has led to the development of a codified accounting practice in South Africa.

2.4.2 The Position today in South Africa

On its way to becoming recognised as a profession accounting has given rise to a number of branches. This is as a result of the variety of work accountants are called upon to perform: from writing up books, to auditing, preparing financial forecasts for shareholders, the mathematics of taxation etc. Many of these tasks are highly specialised requiring specialists with a great deal of expertise in that particular area. This is a change from the traditional image of the accountant, where the term accountant was deemed to be synonomous with auditing. Accountants who went into commerce and industry were regarded as having left the profession. The modern approach to auditing and the extension of the accountants' practice into other more varied fields have brought the accountant into a broader professional scene, negating to a certain extent the traditional "back-room", dull image auditing gave to accountancy. Accountants are now seen in leadership positions throughout commerce, industry and finance.

The position today, then, is that Accounting firms have grown tremen-

dously in size and in the scope of their services. This has been in response to the needs of their clients. The services available from Ernst and Whinney South Africa, serves as a good example [Appendix A to this Chapter]. For the purposes of this discussion it is not necessary to explore in more detail where else accountants find themselves engaged in the course of their profession.

The administrative structure of the profession consists of the Public Accountants and Auditors Board which regulates the profession in South Africa. Further bodies consist of the Association of Commercial and Financial Technicians, the Chartered Institute of Secretaries and Administrators, the Institute of Cost and Management Accountants, the National Council of Chartered Accountants [SA], the four provincial bodies, as well as other smaller bodies of minor importance.

2.4.3 Significant trends in the development of the Accounting profession

The most important point to note in the development of the accounting profession in South Africa is that, unlike law, accounting is a universal language. Thus the profession in South Africa has been influenced to a large extent by developments overseas, mainly in America, but also in England. The greatest influence can be attributed to the Big Eight accounting firms, who have had an impact on accounting, economics and the business community throughout the world. The Big Eight are huge multinational corporations and the largest professional firms in the world. Their names are Arthur Anderson, Arthur Young, Coopers & Lybrand, Deloitte, Haskins & Sells, Ernst & Whinney, Peat Marwick & Mitchell, Price Waterhouse and Touche

Ross. Their services are almost limitless, encompassing auditing, accounting, executive headhunting, merger involvement, tax specialisation, consulting, legal work, financial planning, engineering, actuarial services, planning urban medical centres, designing Third World transportation systems, acting as secretaries to companies, acting as liquidators or judicial managers for companies, acting as trustees for insolvent estates, executorships and other trusteeships, administration of estates, estate planning, share valuations, advising on life and retirement annuity assurance, and other insurance, acting as share transfer registrars, pension fund administration etc. etc. This is indicative of the tremendous growth rate of accounting firms throughout the 20th century. Once accountants had established their role as auditors, they could then expand their services to their clients as demanded. This has been very prevalent in times of economic hardship, and there has been a distinct trend for greater acceptance of the accountant in industry worldwide. Unlike lawyers, the accountants, in the form of the Big Eight, recognised gaps in the market where they existed, and expanded their services as rapidly as possible. This they did by acquiring experts in specialised fields, as needed.

Thus the most significant trend in the accounting profession worldwide has been that the Big Eight realised that if they confined themselves to auditing they would be losing out on some very lucrative markets. Thus they acquired more and more skills and expanded their services, and today they can be regarded as amongst the most influential powers in the world. Auditing gave them the foot in the door, and from there they provided whatever service their clients requested, pro-

viding it was somehow related to an accountant's role. They have adopted classic marketing techniques of positioning, segmentation etc in order to compete vigorously for accounts of clients. However, although the accountants have adapted to the aggressive business climate we live in, they are also very aware of the professional image of an accountant. Thus on the one hand they are prepared to go out and sell themselves, but on the other hand they are very careful not to be seen to do anything which their clients would not expect an accountant to do.

The development of the South African accounting profession, as mentioned earlier, has followed the international trends. The Big Eight all operate in South Africa, and as can be seen in Appendix A to this Chapter, offer a huge variety of services to their clients. Of particular relevance to this trend of diversifying away from auditing is the formation of the so-called "Service Companies" by the accounting firms. As discussed in Chapter 3, the accountants in South Africa operate under a strict code of conduct. However, as auditing provided the firms with an entree to advising clients on a far wider range of issues, the accountants responded accordingly. They thus formed these service companies through setting up a limited liability company and paying the members of the company, known as principals, a salary equivalent to what they would get if they were partners. This way they have overcome the constraint on accountants on sharing of fees with non-accountants [see Chapter 3]. These service companies are usually set up for tax breaks, or else as the more commonly known "Management Advisory Services". The companies cannot do anything which an accountant in public practice cannot do,

and they are still subject to the ethical and professional standards imposed on the accounting firm.

When viewing the above trends towards diversification and growth of the accounting profession, it can be seen that these trends are of particular relevance to the formation of a Multidisciplinary Practice. It can be seen that the accountants have digressed into fields traditionally coveted by the legal profession, and through the formation of the service companies have shown the way to overcoming the constraints on accountants getting together with non-accountants. As Prof. Kritzinger [Interview:November, 1986] states: "There is room for a one-stop professional service, as I see that there is room for virtually every other profession to get together with accountants. At an advanced level all the disciplines disappear into a mass of professional information". He points out that the accountants are the "Japanese of the Social Sciences". If they don't have the expertise, they buy it in. He feels that the accountants are fulfilling a need; not selling a product but satisfying a demand. Because of the respectability attached to the attest function of the audit, clients have turned to their auditors for other advice, and like true businessmen, the accountants have responded. Hence the formation of Service Companies. We respectfully submit that these service companies are a multidisciplinary service in effect and thus the accountants have recognised this trend already.

Mr Ochse [Interview:July, 1986] is of the opinion that recent developments in business with the introduction of the Close Corporations could impact on auditing. It is already true that

accountants world-wide are obtaining less revenue from auditing than they used to. However, Mr Coombe [Interview: September, 1986] and Prof. Kritzinger [Interview: November, 1986] are of the opinion that auditing is merely changing its form and that Close Corporations will have minimal impact on the audit function. Prof. Kritzinger points out the change in the tools used for the audit with more use of computing and statistical packages, leading to a far greater analysis of risk areas than was previously done. He further states that the recent trend has been toward "value for money" audits, born out of the strong audit firms having very good management advisory services. Value for money auditing is a type of social audit of performance and programme evaluation etc: it doesn't matter where the money goes so long as value for money is obtained. And Mr Coombe is of the opinion that the audit function is changing from the checking of records to a more forward looking function where auditors give their name to forecasts. He sees the auditing business expanding into new areas of financial services generally. Thus it can be seen that although times and needs change, the accountants seem able to adapt to the needs of the times. Instead of giving up on the audit function they merely shift their emphasis.

A further trend highlighted by Mr Coombe is of the growing apart of the two professions as a result of internationalism. He sees the accountants through their international links becoming more international in their thinking, and as lawyers have less international contact the gap will increase. This point, although valid, has recently been disproved to a certain extent by Webber Wentzel's and Shepstone & Wylie's moves discussed earlier in this

Chapter. However, with respect, we agree with Mr Coombe. Having interviewed members of both professions, we found the accountants to be far more progressive and international in their thinking than the lawyers.

A final significant trend on the Accounting Profession in South Africa has been the inroad on their services by the banks, trust companies, insurance companies etc. This is the identical problem facing the legal profession, as discussed earlier in this Chapter. The accountants have been much quicker than the lawyers at responding to these threats, but are severely hampered by the constraints imposed on them in terms of marketing and advertising. Thus they are unable to compete with these institutions on an equal footing, as they can only rely on word of mouth to sell their services whereas these other institutions advertise their services in a very vigorous manner. Both the accounting and legal professions are examining the question of advertising, but at the moment the restrictions on advertising remain.

2.4.4 Trends in England, America and Australia toward a Multidisciplinary Practice

The most significant trend towards Multidisciplinary Practice in America has already been highlighted: the accountants in the form of the Big Eight have diversified and expanded their services tremendously, acquiring skills and specialists as needed. The accounting firms have thus shown in America that they accept they are in a competitive business. Most of the Big Eight have a management

committee or executive committee acting as a fulltime management team. The lawyers in America have only very recently started hiring professional executive directors or legal administrators to manage the non-legal functions. Thus the accountants in America have shown themselves more willing to accept new business ideas than the lawyers. Accountants have also shown themselves to be more ready to embrace new technology to assist their practice. As clients have switched their accounting files to computer, the accountants developed programmes and methods to audit computers offering better service to their clients at lower fees. Lawyers are now using computers for bookkeeping services, and some are even producing automated management information concerning productivity and profitability, but few are actually using computers to assist in the practice of the law. Thus it can be seen that in America the legal profession has been far more reticent to move with the times than the accountants. However, a significant trend has been the closer interface between the two professions in America. Accounting firms have become more and more closely linked to legal firms offering them diverse services such as accounting and auditing, tax planning, management consulting services, litigation support counselling, and more recently, involvement as part of industrial relations negotiating teams. So the trend in America has been towards closer interaction between the two professions. Whether a fullscale Multidisciplinary Practice exists already in America however, we can unfortunately not say. Unsubstantiated information would indicate that this is so; however, our correspondence with American associations and firms has so far been inconclusive. [International Correspondence : see Chapter 1].

Turning to the situation in Australia, similar constraints appear to apply in the various states as in South Africa. However our research [International Correspondence : see Chapter 1] did manage to locate one Multidisciplinary Practice in Western Australia, namely Freehill/Greenwoods, a merger between the national legal firm Freehill Hollingdale & Page and the chartered accounting firm Greenwoods. However, according to Peter Fitzpatrick, the Executive Director of the Law Society of Western Australia, details of this merger and its structure remain strictly confidential. Further research into the situation in Australia proved inconclusive, with unsubstantiated information pointing to the existence of other multidisciplinary practices.

In England and Wales, mixed partnerships are prohibited for solicitors and accountants. [International Correspondence : see Chapter 1]. However in November 1984 a Joint Working Party incorporating members of the Law Society, the Royal Institution of Chartered Surveyors, the Incorporated Society of Valuers and Auctioneers, and the National Association of Estate Agents was established to investigate inter-professional partnerships. The Working Party came to the conclusion that there would be distinct advantages to the public if mixed partnerships could be achieved, and recommended the implementation of mixed inter-professional partnerships. They recommended an easing of the laws to allow professionals to get together to offer package deals to the public.

Another paper published in May 1985 by the Contingency Planning

Working Party of the Council of the Law Society questioned the suitability and applicability of the traditional ethics of the profession. The feeling was expressed that the restrictions on solicitors forming partnerships with non-solicitors should be lifted. The Master of the Rolls in his address to the National Conference of the Law Society in 1984 stated: "if this will provide a better service to the public, as well it might, and if it can be achieved without risk to our own professional standards, I do not see why it should not be permitted and indeed encouraged".

Thus in England, although Multidisciplinary Practices do not and cannot exist, the question is being discussed at the highest level. In October, 1985, the Working Party referred to above published the responses to a questionnaire it sent out to practising solicitors on changes in Solicitors' Rules of Conduct with regard to mixed partnerships. The overwhelming response appeared to indicate that the profession as a whole wanted change, particularly to permit freedom of the profession to attract business. As far as mixed partnerships were concerned, the results were inconclusive. However, a trend seems to have started in England whereby the legal profession has woken up to the threats of competition, and they are now doing an in-depth analysis to work out ways of meeting this challenge. Mixed partnerships or multidisciplinary practice is one of the options being considered.

Thus viewing these trends as a whole, it would appear as if the two professions are definitely tending to get together more in Australia, America and England, and multidisciplinary practices are at least

being investigated, if they do not already exist. Although the South African legal profession tends to insulate itself from outside influences, we respectfully submit that these trends will definitely impact on the accountancy profession in South Africa. Through their international links, the accountants in South Africa tend to follow overseas trends, and thus we feel that these trends will be closely watched and, if proved viable, implemented by the accounting profession in South Africa. Deloittes and Webber Wentzel have already shown the way.

2.5 CONCLUSION; A FUTURE PROFILE OF THE LEGAL AND ACCOUNTING PROFESSIONS IN SOUTH AFRICA

In this Chapter, we have sketched the early development of both professions, and outlined their present structure. Significant trends, and more particularly trends towards formation of Multi-disciplinary Practices have been highlighted. Trends and moves in England, America and Australia were briefly alluded to.

The picture formed so far is that not only in South Africa but also overseas, notwithstanding legal constraints and ethical problems on the getting together of the two professions, there is a definite trend afoot towards amalgamation. This was started by the recognition by the accounting profession of more lucrative markets outside auditing, and the subsequent formation of their service companies [Management Advisory Services]. The services offered by the Big Eight today epitomise this trend away from pure auditing as a means of revenue. We have shown how the accounting profession in South Africa has, through its international links with the Big Eight, followed these trends. It has however lagged behind when it comes to the marketing and advertising side. The legal profession has been much slower to respond to the changing forces of the marketplace. This was shown to be the case not only in South Africa, but also in America, England and Australia. However, it would seem that the South African profession is even slower than its overseas counterparts when it comes to adapting to the times. Professional jealousy, snobbery and the strong links to the past were pointed out as possible reasons for

this. Too many of the practitioners still seem to think of the profession as being a "calling" and not a business.

The most recent developments in South Africa though are the most important trend. We outlined how Webber Wentzel and Deloitte, Haskins & Sells have formed a Multidisciplinary Practice called Intertax, offering their combined services in a highly specialised field. The reasons were shown to be simply market forces: the need was there, and the two companies have taken the gap to fulfill this need. Webber Wentzel and Shepstone & Wylie have also formed a formal association to strengthen their services to their clients both domestically and internationally. This has shown that there are a few enlightened thinkers amongst the professions who feel that a Multidisciplinary Practice is a viable concept in the marketplace, and have been prepared to go ahead to form one. Is this the start of the Multidisciplinary Practice in South Africa? The spokesmen for Deloittes and Webber Wentzel were not prepared to commit themselves on this point; however, they did point out that so far Intertax has been "snowed under" with work, and they will need to expand their staff in the near future. Most importantly, they did see a definite competitive advantage in Intertax, and saw no reason why multidisciplinary practices should not be more common in South Africa.

When looking at the future profile of the two professions, the impact of the "brain drain" cannot be ignored. There will be, in fact there already is, a distinct shortage of professional skills in South Africa.

This presents a threat as well as a challenge to the two professions. When this threat is combined to the inroads made on the traditional domain of accountants and lawyers by the trust companies, banks, insurance companies etc. and the fact that lawyers have priced themselves out of the reach of the average man in the street, it would appear as if the professions face an uncertain future. We respectfully submit that if they get together to form a united front against these threats, they will survive. We feel that the synergy [Chapter 4] is sufficient to warrant getting together. Further, although many practitioners feel that the ethics of the two professions are different, we have argued [Chapter 3] that in fact the two are virtually identical. We feel that although there are problems to be overcome, not least of all professional jealousy and historical mindset, in the end self-preservation of the two professions will prevail and they will come together. We do not foresee multidisciplinary practices as totally eclipsing the traditional accounting or legal firms; however, we do see the formation of companies along the lines of Intertax becoming the vogue. However, as the spokesmen for Deloittes and Webber Wentzel indicated, the constraints on advertising severely curtail their competition with other non-regulated institutions like the banks. We thus foresee a change in the rules governing advertising as being essential. It is, we feel, highly desirable that multidisciplinary practices, through their links to law firms and accounting firms, maintain the high standard of professionalism traditionally associated with the professions. However, they should not be hampered by constraints on advertising, which is, after all, an acceptable practice in the business world, and has been for years.

Thus we feel that although the future of South Africa is uncertain and will be shaped by events outside the control of the two professions, the professions themselves should not accept adverse factors passively. They must plan now to make a better and more significant contribution to the business environment. Webber Wentzel, Shepstone & Wylie and Deloitte, Haskins & Sells have shown where they see their future going. This, with respect, supports our argument that a united front in the form of a multidisciplinary service and "pooling of talents" is necessary for the preservation of the two professions.

In conclusion, it is necessary to highlight the trends foreseen by some of the parties interviewed for this research. Mr A. Routledge [Interview:July, 1986] predicts a much closer working together in the future of the two professions, as well as a greater trend towards the acquisition of specific skills as needed. He indicated that Ernst & Whinney are considering the idea of getting together with a reputable firm of attorneys to offer their services on an ad hoc project team basis. This would be in the form of a multidisciplinary service, and he foresaw a distinct strategic competitive advantage in this association. Mr S. Symington [Interview:November, 1986] is of the opinion that a relaxation of the rules restricting advertising is inevitable, as the professions must be allowed to compete with the very vigorous marketing efforts displayed by other institutions. He also foresees a continuing move towards multidisciplinary practices in South Africa. He states that because of the combined threat to the two professions, described above, and that because the public interest is not necessarily being best served by the competition, a Multi-disciplinary Practice becomes a very attractive proposition. Mr C.

Prismin [Interview:November, 1986] agrees with this viewpoint. He thinks that lawyers in future will need to make greater and greater use of accountants, and vice versa. He states that South Africa is in fact seeing the commencement of the formation of multidisciplinary practices, and that Intertax is merely an indication of things to come. He also states that he doubts whether South Africa can afford the luxury of the divided Bar/Side Bar for much longer, and we may well see the legal profession following other African States where there is no longer this division. Mr Prismin is also of the opinion that the legal profession in South Africa will follow Webber Wentzel and Shepstone & Wylie's trend to internationalism, in order to better service clients' needs overseas. Mr O'Grady [Correspondence Interview : November 1986] states the following: "One of the results of the competition and of the ethical constraints imposed upon attorneys will within the next year or two, lead to significant developments [which are already commencing]. Firms of attorneys will set up separate close corporations or companies to handle aspects of their practice which are not strictly legal [tax advice, estate planning, financial investment, business broking etc] which they will control but which are then freed from the control of the Law Society as far as advertising of service is concerned. This will enable a better service to be given to the public and enable attorneys to compete more efficiently with the various bodies which presently compete with them". This view would appear to indicate that certain attorneys are considering establishing bodies similar to the accountants' service companies, and that certain attorneys do find the legal and ethical constraints [Chapter 3] restrictive on their services. Professor Kritzinger [Interview:November, 1986] sees multidisciplinary

practices as a distinct trend. He feels, in fact, that what the accountants have been doing for years through their service companies is to offer a multidisciplinary service. He argues, thus, that Intertax is merely a logical extension of these service companies, offering a highly specialised service. But Prof. Kritzinger takes the argument even further, and sees no reason to limit the Multidisciplinary Practice to merely accountants and lawyers. He feels there is room for virtually all the disciplines to combine to present a "one-stop shop". He believes that ultimately there will be a development towards what he refers to as "trade specific one-stop professional services". These services will arise as the need demands. Prof. Kritzinger also is of the opinion that the legal profession as it exists today is doomed to extinction, simply because of the enormous costs of litigation. He feels that instead of moving towards the business field the legal profession are moving towards fulfilling the needs of the judiciary and the statutory obligations. Thus to survive in the business sphere they will have to change their thinking and interface with the accountancy profession more. Mr A. Coombe [Interview September, 1986] sees a great deal of scope for rationalising the two professions, but he does not foresee the two getting together for a full-scale merger. But he states that accountants are in a service industry and must fulfill the needs of their clients. Thus if clients push for a one-stop shop, he feels that the change will then come. At the moment, however, he feels that the differences between the two professions are too great and present too many problems to warrant getting together. Mr P. Strachan [Interview: November, 1986] is of the opinion that in the future the two professions will definitely work closer together,

particularly the two practising arms of the professions. He sees the type of work done by the two professions as having a sufficient deal of overlap to warrant this close association, and in areas involving complex legal and accounting issues he feels this close association is highly desirable. Mr Strachan points out however, that the accounting profession in South Africa tends to follow the profession in America, and he feels thus that multidisciplinary practices in South Africa will not take off before they do so in America. But he agrees with Mr Routledge on the potential of ad hoc project teams combining both disciplines.

It would thus appear that Intertax is, in fact, an indicator of things to come. We are of the opinion that the Multidisciplinary Practice is a logical extension of the service companies formed by accountants and is a desirable entity in a future South Africa. We believe that ultimately market forces will prevail, and the two professions will come together not only to better protect their own interests, but to better service the needs of their clients.

REFERENCES AND BACKGROUND READING TO CHAPTER 2

BOOKS

Birks. Gentlemen of the law. London : Stevens.

Cowen, D.V. 1959. The History of the Faculty of Law in the University of Cape Town 1859-1959. 1959 Acta Juridica 1.

Dannenbring, Rolf. 1968. Roman Private Law. 2nd Edition. Butterworths.

Gibson, J.T.R. 1970. Wille's Principles of South African Law. 6th Edition. Juta & Company.

Hahlo and Kahn. 1960. The Union of South Africa : The Development of it's Laws and Constitution. Juta & Company.

Halsbury, H.S.G. The Laws of England, being a Complete Statement of the Whole Law of England. 3rd Edition. London : Butterworths.

Huber, U. 1939. The Jurisprudence of My Time translated by P. Crane. Butterworths.

Jenks, E. 1928. A Short History of English Law. 4th Edition. London : Methuen.

McLeary, F. 1985. Accounting and its Business Environment. Juta & Company.

Sampson, D.H. 1983. The South African Attorney's Handbook. 3rd Edition. Butterworths.

Stevens, M. 1981. The Big Eight. Macmillan Publishing Company.

Van Blommenstein, F. 1965. Professional Practice for Attorneys. Juta & Company.

Van der Linden, J. 1794. Verhandeling over de Judicieele Practycq of Form van Procedeeren voor de Hooven van Justistie in Holland gebruikelijk. 2nd Edition. Leiden.

Van Leeuwen, S. Roman-Dutch Law translated by Sir J. Kotz. London : Stevens.

Van Zyl, C.H. 1931. The Judicial Practice in South Africa. 4th Edition. Juta & Company.

Wessels, Sir J.W. 1908. History of Roman Dutch Law. Grahamstown : African Book Company.

Wylie, J. Kerr. 1948. Roman Constitutional History from earliest times to the death of Justinian. Cape Town : The African Bookman.

REPORTS

Public Accountants' and Auditors" Board Annual Report, 1985.

The Report of the Commission of Enquiry into Developments in the Accountancy Profession in South Africa.

The South African Institute of Chartered Accountants Annual Report 1985.

JOURNALS.

Fortune Magazine. 1975 - 1986.

Financial Mail. 1975 - 1986.

American Bar Association Journal. 1975 - Nov. 1986.

CA Magazine. 1975 - 1986.

The New Law Journal. 1975 - 1986.

Law and Society Review. 1975 - 1986.

The American Lawyer. 1975 - 1986.

Businessman's Law. 1975 - 1986.

The Law Society of England Gazette. May 1985.

The Law Society of England Gazette. Oct. 1985.

PERSONAL INTERVIEWS.

Mr D. Clegg	Tax Director, Arthur Young, Cape Town.
Mr A. Coombe	Partner, Price Waterhouse, Cape Town.
Mr S. de Beer	Partner, Adams & Adams, Pretoria. Councillor, Transvaal Law Society
Prof L. Kritzinger	Head of the Accounts Department and Deputy Dean of the Faculty of Commerce, University of Cape Town. Alternate Member of the Public Accountants and Auditors Board. Member of the Commission of Enquiry into Developments in the Accountancy Profession in South Africa.
Mr S. Ochse	Partner, Hoek & Wiehahn, Johannesburg. Past President, Transvaal Society of Chartered Accountants. Member Standing Committee on Attorney/ Accountant Liaison.

Mr C. Prismin	Partner, Prismin & Wilson, Cape Town.
Mr A. Routledge	Managing Director - Ernst & Whinney Management Services Ltd., Johannesburg.
Mr P. Strachan	Partner, Ernst & Whinney, Cape Town President of the Cape Society of Chartered Accountants.
Mr S. Symington	Partner, Arthur Young, Cape Town President of S.A. Institute of Chartered Accountants.
Mr K. Wilson	Senior Partner, Nell & Jacobson, Cape Town Chairman of the Standing Committee on Legal Education Chairman of the Standing Committee for Ethics Chairman of the Standing Committees on Deceased Estates and Attorney/Accountant Liaison.

CORRESPONDENCE INTERVIEW

Mr S. de C. O'Grady	Partner, Bowman, Gilfillan, Hayman, Godfrey Inc., Johannesburg

APPENDIX A.

THE SERVICES AVAILABLE FROM ERNST & WHINNEY.

1. MANAGEMENT CONSULTING SERVICES

1.1 Management information systems

1.1.1 Systems design, development and implementation

1.1.2 Hardware selection

1.1.3 Software support

1.1.4 Manufacturing management

1.1.5 Office automation

1.1.6 Database design and implementation

1.1.7 Facilities management

1.1.8 Software development

1.1.9 Systems evaluations

1.1.10 General computer consulting and training

1.2 Strategic management

1.2.1 Strategic planning

1.2.2 Mergers, acquisitions and schemes of arrangement

1.2.3 Companies and businesses for sale

1.2.4 Valuations

1.2.5 Financial planning

1.2.6 Financial markets

1.2.7 Feasibility studies

1.2.8 Assistance in raising finance

1.2.9 Financial modelling

1.2.10 Systems reviews

1.2.11 Training courses

1.3 Human resources

1.3.1 Executive search

1.3.2 Remuneration packages

1.3.3 Industrial relations

1.3.4 Organisational studies

1.3.5 Personnel policies and procedures

1.4 Health care

1.5 Liquidations

1.6 International expertise

2. TAXATION AND ESTATE PLANNING SERVICES.

2.1 Consulting and planning

2.1.1 Income tax-companies and individuals

2.1.2 Withholding taxes

2.1.3 Sales tax

2.1.4 Transfer duties

2.1.5 Customs and excise duties

2.1.6 Exchange control

2.1.7 Estate planning

2.1.8 Retirement planning

2.1.9 Income splitting/tax hedging

2.2 International tax strategy

2.3 Newsletters and booklets

2.4 Seminar presentations

2.5 Compliance services

3. BUSINESS DIVISION SERVICES TO THE SMALLER BUSINESSMAN

3.1 Accounting and auditing services

3.1.1 Computerised financial information

3.1.2 Manually prepared financial information

3.1.3 Accounting assistance

3.2 General business assistance

3.2.1 Business advice

3.2.2 Data analysis

3.2.3 Cash flow management

3.2.4 Taxation advice & compliance

3.2.5 Liaison with other Ernst & Whinney Divisions

3.3 Secretarial services

CHAPTER 3

LEGAL AND ETHICAL CONSTRAINTS

CHAPTER 3 [Continued] Page

CHAPTER 3

LEGAL AND ETHICAL CONSTRAINTS

3.1 OBJECTIVES OF THE CHAPTER

[a] To identify the existing legal and ethical constraints preventing or limiting the association of practising accountants and attorneys and how such rules are regulated

[b] To determine the logic and underlying reasons for the constraints

[c] To identify possible advantages and disadvantages to practitioners in each profession

[d] To determine whether the constraints apply effectively in practice and whether the reasons for their enactment are still valid

[e] To determine whether Multidisciplinary Practice would violate or threaten any of the underlying assumptions inherent in the constraints.

3.2 INTRODUCTION

In order to understand the regulatory machinery of a profession, it is necessary to determine elements which are common to all professions, the "law" of professions as it were. Historically a profession may be viewed as a collection of individuals practising a particular skill who have been accorded an elevated status by the general public and who act supposedly in the public interest. The issue of public interest is central to the idea of the external ethics of a profession; the protection of the recipient from receiving substandard services which by their very nature he is unable to evaluate properly.

A profession by its nature possesses the following internal and external control functions:

> It must have a minimum level of standards for professional work which must be abided by. In order to achieve this there must be a regulated form of training and the profession must be able to control which persons are able to be admitted to its ranks. A code of ethics is essential which can be translated into rules of conduct to govern the actions of practising practitioners. The profession must be self-regulatory in that it must have governing bodies which comprise skilled individuals able to assess the quality of work being provided. Such governing bodies must be able to take disciplinary action in order to protect the public from malpractice [Interview : Professor Kritzinger, November 1986].

The internal regulation of the conduct between practitioners is equally important to the professions. The concepts of professional dignity and status demand that the image of the professions is not tarnished by the competitive rivalry amongst practitioners themselves which may find expression in unsavoury practises, to quote comparative advertising as an example. The standard of professional service should be beyond reproach and thus could not benefit by comparison. At least this is what the professions would like to believe. This internal ethic is found notably in the regulatory concept of "unfair advantage" between attorneys more fully discussed below.

3.3 THE CONSTRAINTS

3.3.1 Legal Constraints : Attorneys

The conduct of the profession is governed by the Attorneys Act, No 53 of 1979 [as amended] together with the rules as stated for each Province by the respective Provincial Law Society. The Law Society for each province is empowered to make rules binding within such province in terms of Section 74[1] of the Attorneys Act.

Section 74 enables the council of each Law Society to make rules relating to, amongst others:

[a] conduct which on the part of any practitioner shall constitute unprofessional or dishonourable or unworthy conduct;

[b] the conditions relating to conduct or activities on which persons other than practitioners may be employed by practitioners to assist them in their practices.

The following are the legal constraints preventing practising practitioners from associating with non-attorneys:

[1] An attorney may not share fees for legal services with a non-practitioner. The Attorneys Act in Section 83[6] specifically prohibits such sharing and similar provisions are

found in the Law Societies' rules.

[2] An attorney may not enter into any scheme or operation of practice which has the effect of attracting business unfairly and constitutes an unfair advantage. The Rule of the Orange Free State Law Society [Rule : O.F.S. 17.26] is sufficient for the purposes of definition:

> "Directly or indirectly applying or seeking any instruction for professional business or permitting in the conduct of his practice a thing which may reasonably be regarded as touting or advertising or is calculated to attract business unfairly."

The principle of "unfair advantage" is discussed later in the Chapter as a principle underlying many of the constraints.

The Cape rules expressly prohibit any arrangement which would secure for an attorney the benefit of professional work solicited by an unqualified person [Rule : Cape 14.15].

[3] An attorney may not share offices or have inter-communicating offices with a non-practitioner [Rule : Tvl 89.2; Cape 14.24; Natal 14 G[1X]; OFS 17.21].

[4] An attorney may not assist an unqualified person to perform any legal work and charge for it or enable such person to "enjoy, share or participate in any fees for professional work" [Rule :

Cape 14.15.2 [Test appropriate to this principle]].

[5] An attorney while practising may not be in the service of an unqualified person who administers trust or deceased estates, or prepares wills or contracts or other documents relating to persons or property [Rule : Natal 14.21 [Test appropriate to this principle]].

The above rules enumerate specific acts which, inter alia constitute unprofessional or dishonourable or unworthy conduct and merit disciplinary action. The court has a discretion over and above the rules to judge the behaviour of a practitioner unprofessional. Such behaviour would be the contravening of a purely ethical constraint. .

3.3.2 Legal Constraints : Accountants

The Public Accountants and Auditors Act 51 of 1951, as amended [hereinafter referred to as the Act] together with the Rules of Professional Conduct regulates the Accountancy profession in South Africa. The Act, broadly speaking, provides for the establishment of the Public Accountants and Auditors Board, for the registration of public accountants and auditors, for the regulation and training of public accountants and auditors, and other incidental matters.

Section 1 defines, inter alia, that a "public accountant" means a person who is engaged in public practice, and "public practice" means the practice of a person who performs the functions of an accountant or auditor, and for that purpose holds himself out as an accountant or

auditor and places his services at the disposal of the public for reward. The distinction between a practising and non-practising accountant is important when considering the constraints peculiar to a Multidisciplinary Practice. This distinction is explored later in the Chapter.

Section 22 prohibits persons who are not registered in terms of the Act from practising as a public accountant or auditor.

The following are the legal constraints preventing practitioners from associating with non-accountants:

[1] An accountant is bound to confidentiality with regard to information and services provided to the client [Chapter 5[2][1]] of the Act. This is a real constraint to the effective joint service in a Multidisciplinary Practice. The accountant may feel it necessary to disclose information to his legal associate for the necessary performance of a complementary service.

[2] An accountant may not charge fees to a client for work done by a third party who is not registered under the Act [Section [2][j] of the Act] nor may the accountant receive any remuneration from a third party who does work for the client of an accountant. This section is obviously designed to prevent non-accountants, or accountants not registered under the Act, from obtaining work through a registered accountant, and from sharing fees with accountants.

[3] Section 5 of the Rules of Professional Conduct governs the actions of companies and partnerships formed by registered accountants with persons not in public practice. This section prohibits the accountant from using the company to advertise or obtain for himself work normally performed by an accountant or auditor. It further prohibits the company from using in its name or title any word which is descriptive of work commonly performed by an accountant or auditor in public practice. However the word "trust" is excluded from this prohibition, and "consulting" or "consultant" is allowed as long as it is not used in conjunction with "accountant" or "accounting", or "auditor" or "auditing". Important to note here is that such a company cannot contravene any provisions of the Act, the Disciplinary Rules or the Rules of Professional Conduct.

3.4 ETHICAL CONSTRAINTS : BOTH PROFESSIONS

Each profession has a code of ethics. In the interests of certainty rules applying to specific conduct have been enacted. Conduct which transgresses an ethic which may not be enumerated in a specific rule may amount to misconduct.

The ethic of confidentiality for attorneys requires specific mention with regard to Multidisciplinary Practice. The confidence of the client to his attorney is absolute and must be preserved except where

the client has specifically authorised disclosure as it is inherently necessary for the proper performance by the attorney of the client's work [Lewis, 1982 : 293]. With similar effect to the rule for accountants this constraint precludes an attorney from being able to disclose to an accountant any information regarding a client's affairs subject to express authorisation. A difference is however the scope of professional privilege against disclosure of information afforded to attorneys by the laws of evidence. It is uncertain how this privilege would extend to a joint service provided by an accountant and a lawyer. The legal profession would obviously not want to see this privilege compromised. It is interesting here to note that the professional privilege has recently been narrowed in the field of tax, as discussed in Chapter 2. Mr Prismin [Interview : November 1986] is of the opinion that a further narrowing is likely to take place only in the field of security legislation.

A major ethical constraint applying to both professions is conflict of interest. We perceive conflict of interest to exist in two situations. Firstly, it may arise in respect of a threat to the independent discretion of each practitioner in his singular relationship to his client. Secondly, conflict of interest may arise between attorneys and accountants themselves in that accountants are able to audit competing firms, whereas attorneys may not represent competing interests. This situation we feel is more properly dealt with as a potential problem of integration [Chapter 6]. We turn now to consider the first instance.

The professions are bound to provide services in the client's best interest. Any conflict which may arise due to the individual interest of the practitioner would impair his independent discretion and be potentially prejudicial to the client. Mr A. Coombe [Interview : September 1986] argues that the two professions are so independent that they act as monitoring devices for each other and thus the client benefits from having two independent professional bodies. However, each profession is monitored by the respective governing body and thus it is not necessary to have a watchdog. The professions are further not able to evaluate the standard of each other's work as they do not possess the requisite skills. Mr Clegg [Interview : June 1986] states, and Mr Routledge [Interview : July 1986] concurs, as long as the client is informed up front who and what he is dealing with, and has a freedom of choice to employ a multidisciplinary team or his own accountant and attorney no potential prejudice is present.

3.5 THE UNDERLYING REASONS FOR THE CONSTRAINTS

The constraints reflect the ethical codes of the professions which regulate the external relationship beween practitioner and client; and the internal relationship between practitioners. The rules of conduct are designed to protect and perpetuate the exclusionary nature of the professions.

It will be seen as the specific constraints are discussed that their purpose is essentially identical for each profession, ie they are designed to protect the same professional interests. These interests are the cornerstones of a profession discussed in the introduction:

[a] To regulate the standard of professional work

[b] To allow only those persons whose work is subject to regulation the benefit of professional status

[c] To protect the dignity and status of the profession

[d] To ensure the independence of the practitioner in the client's best interest.

The Price Waterhouse Code of Conduct [1982] is an example of an accounting firm that has stated as the standards of its practice the fundamental ethics of the accounting profession. Certain sections of

the Code are quoted as they pertain to this topic:

[1] We accept the obligation to maintain and enhance our reputation and that of the profession, and, to conform to the highest standards of professional ethics

[2] We offer only services within the scope of and consistent with a public accounting practice and only those which we are competent to perform or supervise

[3] We preserve strict confidentiality in all aspects of our work

[4] We accept new client appointments after careful assessment and avoid possible conflicts of interest

[5] Independence and objectivity are basic to our services and we regard these qualities as essential to our entire practice. Our partners and staff fully accept the commitment to maintain an independent attitude of mind in their professional relationships.

In support of our view that the fundamental ethics of each profession are identical we quote the essence of the International Code of Ethics [Adopted at Oslo on the 25th of July, 1956, as amended] for the legal profession in dealing with international cases, as it pertains to this topic:

[1] Lawyers must maintain the honour and dignity of the profession

[2] Lawyers must preserve independence in the discharge of their professional duty

[3] Lawyers should never represent conflicting interests in litigation

[4] Lawyers should not permit their professional services or names to be used by unqualified persons to obtain a benefit

[5] Lawyers shall not delegate work to unqualified persons not in their employ

We therefore with respect do not accept Mr Wilson's argument [Interview: September, 1986] that a major constraint is the difference in ethics between the two professions.

We turn now to the individual rules. It is clear that however similar the ethics of the two professions may be there are more constraints to attorneys associating than accountants. The fundamental purpose of law is to create a structure to administer justice. The legal profession is the instrument to maintain and protect the interests of justice. The independence of the practitioner is therefore sacred in law. The profession has historically believed that no considerations, especially mundane commercial ones, should intrude in the practitioner's relationship to his client [Interview : Prismin, November 1986]. Accountants by the very nature of their work, are dealing with the commercial interests

of a client. The important but intangible nature of justice for the legal profession has led to special regulations to protect it.

As already mentioned, in order to act in the best interests of the client a practitioner must exercise an independent discretion. Any third party who has an interest in the performance of professional work would threaten this independence. Further to this a third party is not subject to regulation of the standard of work performed. This is the reason against fee sharing.

The maintainance of a standard of work, with the regulatory procedures attendant thereon, is the logic behind rules preventing practitioners from assisting unqualified persons to receive remuneration from professional work or being employed by unqualified persons. This applies to accountants not being able to do through a company what they could not do in their own practice.

The internal ethics of the legal profession are designed to prevent competition amongst practitioners. An attorney may not conduct himself in such a manner as to gain an "unfair advantage". The rationale behind the rule against sharing offices appears to be to prevent practitioners from working in proximity to non-practitioners in such a manner that the customers of others will have automatic access to him which may amount to self-advertisement and constitute an unfair advantage [Lewis, 1982 : 47].

3.6 THE APPLICATION OF THE RULES IN PRACTICE

The rules of misconduct are strictly administered for the legal profession by the Provincial Law Societies which is attested to by attorneys being struck off the roll or suspended from practice [eg in the case of sharing professional fees : Law Society Cape vs Keet 1945 C.P.D. 282]. It is in considering the accounting profession that a diversity emerges.

In the view of Prof. Kritzinger [Interview November, 1986]:

> "The accountancy profession is in effect running a pirate ship. The attest function of the auditor is being used to give respectability to non-professional services rendered by the same firm".

Here he is referring to the so-called "service companies" set up by many of the big accountancy firms, where they offer for example, management advisory services and employ professionals from a complete spectrum of disciplines. These companies have been referred to in Chapter 2 of this report in the discussion of trends in the accounting profession and must be viewed alongside the recent formation of Intertax [Pty]Ltd by Webber Wentzel and Deloitte, Haskins & Sells, also discussed in that Chapter. Thus on the one hand we find constraints imposed on accountants to maintain the integrity of the profession and its independence, and on the other hand these

constraints are being legally circumvented to fulfill a market need as perceived by members of the profession. We submit that this is a charade: the respectability of the profession is being given to these service companies, as the public views these companies as being part and parcel of the accountancy firm. They do, after all, have the same name even if it includes the designation "[Pty]Ltd, Management Consultancy Services".

It must be taken into account, however, that in terms of Rule 5 of the Rules of Professional Conduct, a service company is not entitled to do what an accountant in public practice may not do. Although other disciplines are combined with the accountants as salaried employees of the company they are subject to the code of professional conduct. Thus, although the rules lead to an anomolous situation, they ensure a high standard of work by service companies. The good name and reputation of the accounting firm depends on this. This is a strong advantage for maintaining the constraints.

The difference between a practising and non-practising accountant is not relevant to the question of Multidisciplinary Practice if the non-practising accountant is a member of a Provincial Society and the South African Institute of Chartered Accountants. An accountant in commerce [non-practising] is subject to the same rules as a practising accountant, the former to the rules laid down by the Public Accountants and Auditors Board, and the latter to the rules of the Institute. In substance the rules are identical. A non-practising accountant employed by a service company therefore is bound to offer the same service as a practising accountant, thus the standards of the profession are not compromised.

The constraints to a Multidisciplinary Practice can be completely overcome by an accountant and an attorney deregistering from their respective governing bodies. This has negative implications however. An accountant who is not a member of the Institute and a Provincial Society cannot call himself "CA[SA]", a valuable designation, but he is free of all restraints in terms of the Code of Conduct. He would lose his professional status, and all he would offer would be his skills, the evaluation of which would be determined by the open marketplace. Further to this he is precluded from performing audits if not registered. Although this option may seem attractive there are dangers involved. Apart from the possible lowering of standards of professional conduct, the individual might neglect to keep his level of knowledge up to the standard required by the Institute. Although there is no machinery within the Institute to see that this requirement is being adhered to, there is a monitoring of standards, and the Institute is presently investigating the means of setting up such machinery [Interview Symington : November 1986]. An unregistered accountant has no professional obligation to maintain his knowledge level. Mr Symington believes that such individuals would be at the mercy of the open market, offering a basket of skills which might diminish with the pressure of business. Further, clients may force such individuals to move into specialised fields and their general skills as accountants would be dissipated.

The expectation of an unregistered accountant is likely to be driven by a profit motive. Mr Symington is further of the opinion that this is not necessarily negative, depending on the expectations of the

client. If a client approaches a Multidisciplinary Practice with the impression that he is dealing with duly qualified practitioners and the work is sub-standard he will not return. It would be in the practitioner's best interest to maintain a high standard of professionalism not in response to ethical constraints, but in response to market forces.

An attorney can exempt himself from being subject to the rules of misconduct if he ceases to be a practising practitioner by having his name removed from the Attorneys Roll. He is then no longer subject to the discipline of the Law Society. A non-practising attorney is however limited in the services he can perform. Section 83 of the Attorneys Act imposes the following limitations:

[1] He may not use the title or create the impression that he is a practitioner

[2] He may not, either for himself or any other person, tout for any work in connection with the drawing up of wills, the administration or liquidation of estates, of deceased, mentally ill or insolvent persons or any other person under a legal disability, or the judicial management or liquidation of a company

[3] He cannot appear in court. It must be noted that an agent can appear in the Income Tax Court

[4] He cannot draw up agreements in relation to immoveable property with minor exceptions

[5] He cannot draw up any memorandum or articles of association or prospectus of any company

[6] He cannot draw up any document relating to the creation or dissolution of a partnership

[7] He cannot draw up any instrument or document intended for use in a court of civil jurisdiction.

The section includes certain exclusionary provisions to allow, for instance, trust companies to perform certain of the abovementioned work. These provisions do not apply to a Multidisciplinary Practice of lawyers and accountants.

The effect of an attorney removing himself from the roll is more onerous than an accountant deregistering. Not only does he sacrifice the benefit of professional status, but the scope of the service he can perform is limited. In addition he loses the privileges of an attorney, the most important being the privilege of non-disclosure.

The effect of the constraints in practice may thus be summarised: the attorney is prevented from association as long as he remains on the attorneys roll. If he removes himself he is subject to no constraints. Accountants are able, and are currently forming associations under the guise of service companies. Within such companies they are subject to the regulation of the profession. An accountant who deregisters himself with the Institute is subject to no constraints.

3.7 THE ADVANTAGES AND DISADVANTAGES OF THE CONSTRAINTS

The constraints protect the image and status of the professions by perpetuating their exclusive, self-regulated nature. The interest of the client is protected by maintaining the professional independence of the practitioner and a regulated standard of professional work.

The regulation of internal competition amongst attorneys protects the interests of the smaller practices against the competitive advantage which would be gained by large practices with greater resources. This argument will be highlighted later when considering the marketing [Chapter 7] of the professions, as a reason against allowing advertising.

The constraints do not allow the professions to effectively counter the threat of competition not subject to the same constraints, as referred to in Chapter 2. A joint practice formed with non-practising attorneys and deregistered accountants would not have the benefit of professional status as a competitive advantage over the non-professional competition. A service company similarly cannot have professional legal status.

3.8 MULTIDISCIPLINARY PRACTICE - A CLASH WITH ETHICS!

In our discussion so far we have determined that the underlying reasons for the constraints are ethical in each profession. Whether the concept of a Multidisciplinary Practice would violate these underlying assumptions is therefore a question of whether the ethics of the professions would be threatened. It is necessary to briefly reiterate the concept of Multidisciplinary Practice as proposed.

Multidisciplinary Practice is the combination, formal or informal, of practitioners from each discipline to provide an integrated service to the client. If the practitioners were subject to regulation of the standard of professional work by the professions, no lowering of the status and dignity of the professions would arise.

With regard to the necessity for independence of the practitioner in performing professional work, one must look at the services being performed. Attorneys and accountants have different but complementary skills, referred to in Chapter 4. They bring different casts of interpretation, legal and numerate to a problem. The nature of the function performed by the practitioners would not be different from the function they presently perform thus a joint service does not affect the independent discretion of either practitioner.

The ethics of both professions are inherently identical in their purpose and thus in combination no potential prejudice to the client is foreseen. If a conflict of interest were to arise the practitioners would be bound to attempt to avoid it in the same way as they are currently bound to avoid conflicts of interest.

With regard to attorneys, a Multidisciplinary Practice may violate the principle of "unfair advantage". Attorneys in combination with, for instance, the Big Eight accounting firms would have an unfair advantage in soliciting legal work [Interview : Wilson, September 1986]. In Chapter 7, however, it is argued that unfair advantage exists in the legal profession at present by virtue of larger practices having greater intellectual and financial resources.

3.9 CONCLUSION

Practising accountants and attorneys are precluded by the constraints from integrating their respective scopes of service and their respective professional privileges. Associations of a lesser nature can and do exist with special relevance to the service companies of accountants. Such joint practice would, for example, have to do its audits through registered accountants, and its will drafting, conveyancing etc through practising attorneys or conveyancers.

The lesser associations, formed to circumvent the constraints, may prejudice the public interest. Such firms, with the exception of service companies, would provide professional services which are not regulated by the professions.

We have identified the areas of synergy between the two professions [Chapter 4], the trends towards close association between the professions [Chapter 2] and the threats to the professions by other institutions [Chapter 7]. With regard to the threat of competition by banks, insurance companies etc we feel that the constraints should be amended to allow the professions to compete on an equal basis. In order to compete successfully the professions should present a united front. Combined practices would be offering essentially the same service as the financial institutions but under the auspices of the professional image which would be a competitive advantage. In

addition, the public interest would be served by assuming a superior standard of work through the regulation and monitoring of standards.

Opening the door to Multidisciplinary Practice would require a change in legislation, a change in the status quo. We now consider the most important unwritten constraint: attitude of mind. Both professions have historically viewed themselves as separate. Lawyers are imbued with a higher sense of professional calling: the interests of justice. Both professions are loathe to give up their identity [Interview : Professor Kritzinger, November 1986]. There is a professional jealousy regarding the domains of their respective services. Lawyers regard tax work as legal work, accountants as accounting work. In our opinion it is both. An architect interprets the design wishes of a client, a quantity surveyor gives numerate interpretation to the resources needed. They are different applications to the same problem. Accountants have numerate skills, lawyers have interpretative skills.

Mr Clegg [Interview : June, 1986] is of the opinion that accountants do not feel as superior about their specific knowledge as lawyers do. He further believes that lawyers feel more threatened by inroads into their profession than accountants do with regard to any changing of the status quo. Mr De Beer [Interview : July, 1986] views the legal profession as protected by a "shield of conservatism". This has been borne out in the general impression we have gained during the course of interviewing practitioners from both professions.

The legal profession has an ethical problem in responding to market forces. It is however being forced, by the public not being able to afford its services, to recognise commercial considerations. It should further recognise that the interests of the public would be served by the application of both skills to a commercial problem and the professional regulation of such service. It is therefore a positive development to allow practising practitioners from each profession to associate in providing professional services.

REFERENCES AND BACKGROUND READING TO CHAPTER 3

LEGISLATION

Rules of the Law Society of the Cape of Good Hope framed in terms of Section 21[1] of Act 41 of 1975, now Section 74[1] of Act 53 of 1979.

Rules of the Law Society of Natal framed in terms of Section 21[1] of Act 41 of 1975, now Section 74[1] of Act 53 of 1979.

Rules of the Law Society of the Orange Free State framed in terms of Section 21[1] of Act 41 of 1975, now Section 74[1] of Act 53 of 1979.

Rules of the Law Society of the Transvaal framed in terms of Section 74[1] of Act 53 of 1979.

The Attorneys Act, No 53 of 1979.

The Public Accountants and Auditors Act, No 51 of 1951.

The Rules of Professional Conduct framed in terms of Section 21 of Act 51 of 1951.

International Code of Ethics [Legal Profession] adopted at Oslo on 25th July, 1956, and amended by the General Meeting of the International Bar Association in Mexico City, 29th July, 1964, and at Stockholm, 18th August, 1976.

BOOKS

Lewis, E.A.L. 1982. Legal Ethics - A guide to Professional Conduct for South African Attorneys. Juta and Co. Ltd.

Sampson, D.H. 1983. The South African Attorneys Handbook. 3rd Edition. Butterworth's.

van Blommenstein, F. 1965. Professional Practice for Attorneys. Juta and Co. Ltd.

The Manual of Information for the Guidance of Registered Accountants and Auditors.

The Price Waterhouse Code of Conduct 1982.

Report of the Commission of Enquiry into Developments in the Accountancy Profession in South Africa.

PERSONAL INTERVIEWS.

Mr D. Clegg	Tax Director, Arthur Young, Cape Town.
Mr A. Coombe	Partner, Price Waterhouse, Cape Town.
Mr S. de Beer	Partner, Adams & Adams, Pretoria. Councillor, Transvaal Law Society
Prof. L. Kritzinger	Head of the Accounts Department and Deputy Dean of the Faculty of Commerce, University of Cape Town. Alternate Member of the Public Accountants and Auditors Board. Member of the Commission of Enquiry into Developments in the Accountancy Profession in South Africa.
Mr S. Ochse	Partner, Hoek & Wiehahn, Johannesburg. Past President: Transvaal Society of Chartered Accountants Member Standing Committee on Attorney/ Accountant Liaison
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Mr K. Wilson	Senior Partner, Nell & Jacobson, Cape Town Chairman of the Standing Committee on Legal Education Chairman of the Standing Committee for Ethics Chairman of the Standing Committees on Deceased Estates and Attorney/Accountant Liaison.

CHAPTER 4

THE SYNERGY BETWEEN LAW AND ACCOUNTING

CHAPTER 4.

THE SYNERGY BETWEEN LAW AND ACCOUNTING

4.1 OBJECTIVES OF THE CHAPTER.

[a] To identify the areas of synergy and overlap between the two professions.

[b] To ascertain to what extent the synergy lies.

4.2 INTRODUCTION.

Synergism: Also called synergy: The working together of two or more drugs, muscles etc to produce an effect greater than the sum of their individual effects [From New Latin Synergismus, from Greek sunergos, from syn and ergon work] - Collins English dictionary 1985. A similar definition is given in the Oxford dictionary of the English language - 1985.

The word synergy is commonly used today in the business sense to mean that when two business units are joined together, the combination is greater or more powerful than the sum of the two individual units. Put simply: 2+2=5. Synergy is thus referred to as "the new mathematical term for the expansiveness of the economic benefits that, under ideal conditions, result from merging, and that are possible only in merging. To illustrate: a company pairs horizontally, in the same field with another of near equal size. By consolidating the duplicate functions of bookkeeping, warehousing, advertising etc, and integrating executive staffs and sales forces, economies would be achieved that could boost profits up to 10%. And by sharing brains, access to credit, patents, processes, facilities, sources of supply, markets etc, overall operating efficiencies would be realised that could add another 10% to nett earnings. Thus 2+2=5". [Short, 1967:33].

In Chapter 2 we highlighted the significant trends in both professions, exposing the contrasting approaches adopted by each one. We showed how the accountants have expanded the scope of their services,

becoming global business organisations, whereas the lawyers have remained classic partnerships, embedded in their roots, constrained by ethical considerations and not administered as "businesses" at all. Can there then be any legitimate comparison of these organisations? While they provide complementary services to the same sets of clients. their growth, structure and approach to professional services appear quite different. However, it must be remembered that attorneys and accountants have existed side by side for years, frequently joining forces to benefit their clients in situations as diverse as the structuring and analysis of financial transactions, the execution of mergers and acquisitions and divestiture, the development of tax plans for various purposes, the obtaining of new financing in the debt and capital markets, and many more.

As highlighted in Chapter 2, a definite trend towards close association and merging exists, and according to the various practitioners interviewed, all law firms have close association with at least one accounting firm, and vice versa. Thus, in spite of the contrasts between the two professions, it would appear as if definite areas of overlap do lie, and synergistic benefits are felt to be necessary in various instances. The skills of lawyers are primarily interpretive, the skills of accountants primarily numerative. We can now examine those areas in which a synergistic benefit would arise, in the sense that the two skills would complement each other to result in a better quality service.

4.3 THE PERCEIVED AREAS OF SYNERGY.

A person has a tax problem. To whom does he turn, his lawyer or his accountant? If the problem is sufficiently complex, both will probably be necessary. A company is involved in labour negotiations, and is accused of an unfair labour practice with regard to the financial status of the company in the wage bargaining. Who should be on the negotiating team? Lawyers and accountants surely: the lawyers to do the interpreting and haggling, and the accountants to provide the quantitative data. A company is being liquidated. Who is involved in the liquidation? Lawyers and accountants, primarily.

It should be patently obvious that when the above examples are examined, the particular problems involve both the interpretive skill of the lawyer and the numerate skill of the accountant. Together the two can solve problems which alone they might not be able to solve, or if they could, the solution might be inferior or take far longer than the two working in harmony. We are of the opinion, and here we are supported by various practitioners, that the areas of synergy which exist between the two professions are as follows:

[a] Tax

[b] Estate planning, with particular reference to taxation implications

[c] Labour law, as described in the example above

[d] Merchant banking and corporate finance

[e] Liquidations

[f] Mergers and acquisitions

[g] Legal disputes and opinions eg litigation, divorce settlements.

[h] Share transactions.

In all of these areas we feel that an accountant and lawyer working together will provide a better service than if they work alone. In fact we are of the opinion that in many complex situations the accountant or lawyer would have to accept his limitations and admit he is incapable of solving the problem alone. This is a logical result of the training, or lack thereof, given to each profession.

Professor Kritzinger [Interview November, 1986] agrees with us on the above areas of synergy. He supports the idea of a Multidisciplinary Practice completely, stating that he feels the areas of synergy are so great as to warrant integration. He feels it is wrong for the accountants and lawyers to bicker over who supplies the better service: they are in essence solving the same problem with complementary skills, and together they will give a better solution. He is supported in this view by Mr Liefeldt [Interview August, 1986], Mr Ochse and Mr De Beer [Interviews July 1986]. Mr Symington [Interview November 1986] also feels the areas of synergy are sufficient to warrant integration. He stated that when he was President of the Cape Society of Chartered Accountants, he made the suggestion that "given the areas of synergy, there might be some sense in exploring the possibility of attorneys and accountants working together in some sort of joint structure". Mr Prismin [Interview November, 1986] is of the opinion that the synergistic benefits are primarily in the tax field. He feels that in any commercial transaction tax is a vital consideration, and thus the different inputs of the two professions

will always be advantageous. Mr Prismin also highlighted the absurd situation where in the Cape liquidations are the preserve of accountants due to the fact that by historical precedent the Master of the Supreme Court will appoint no one else, and yet in the Orange Free State liquidations are the preserve of attorneys. Thus, as in tax situations, no one appears to know which profession is better qualified in that field. Mr O'Grady [Correspondence Interview November, 1986], a senior legal practitioner in Johannesburg states that reputable attorneys, [presumably in the Johannesburg area] tend to stay clear of liquidation work, as it has a bad name. This would appear to imply that the accountants or attorneys who are prepared to do this work are not particularly concerned with the effects of a bad reputation. Further, we respectfully submit, this does not detract from the synergistic benefits. Mr Wilson [Interview September, 1986] sees tax as being the only area where sufficient synergy would lie to warrant possible integration, and that on an ad hoc project basis. He feels that in the other areas a multidisciplinary practice would be of insignificant benefit, and the problems would far outweigh any synergistic benefits. With the greatest of respect, we beg to differ. Mr Wilson states that all lawyers have of necessity a close association with accounting firms, which implies that there are areas, such as those we have highlighted above, where the two professions need to work hand in hand. In addition, we are of the opinion, shared by Mr Prismin [Interview November, 1986] that almost every aspect of commercial work involves tax implications, and if Mr Wilson can perceive synergistic benefits in the tax field this can logically be extended to other areas too. Mr Coombe [Interview September, 1986] also agrees with our opinion on the areas of synergy. He

however does not see sufficient synergy to warrant fullscale merging. He argues that the areas of synergy are not the mainstream of the accounting profession, which is" auditing, taxation, accounting, computer consulting etc". With respect, auditing involves a massive amount of legal input: perusal of any textbook on auditing will bear this out. Further, taxation, as mentioned earlier, definitely involves legal skills, as well as accounting.Mr Coombe does state, however, that although he cannot foresee the need for fullscale merging of practices, the need definitely does exist for integrated ad hoc project teams. Here he is supported by Mr Routledge [Interview July, 1986] who also highlights the areas of synergy and states that they are insufficient to warrant more than the formation of integrated ad hoc project teams. Mr de Villiers [Correspondence interview November, 1986] also feels that ad hoc project teams comprising members of both professions would be the most efficient form of service to the client. The other practitioners interviewed agree on the areas of synergy, and differ on the extent thereof, but express essentially no viewpoint different to those expressed above.

4.4 CONCLUSION.

From the above discussion, we respectfully submit that there is no doubt as to where the areas of synergy between the two professions exist. The practitioners interviewed are in agreement with us on that issue. Where the differences of opinion arise, then, is as to the actual extent of the synergy. Does the synergy offer sufficient benefits to warrant a fullscale integrated merger to form a Multidisciplinary Practice, or would a quick phone call to a colleague solve the problem? That question, we feel, cannot be answered in isolation, and thus we do not propose to answer it here. We have identified where the synergy lies and in Chapter 5 we will examine the advantages of a Multidisciplinary Practice which will include the synergistic benefits. Only once that is weighed against the perceived disadvantages of a Multidisciplinary Practice [Chapter 6] will we be in a position to evaluate whether the synergy warrants integration or not. It is sufficient at this stage, we feel, to point out where the synergy lies, and the fact that the need for close association is perceived by the practitioners interviewed. The form of association will be discussed in the conclusion to this paper. However, we do feel that the following quote is particularly apposite: "It is only logical that multiple business organisations that can achieve synergistic effects will have an advantage over those that ignore or fail to achieve synergy". [Aaker, 1984:4].

REFERENCES AND BACKGROUND READING TO CHAPTER 4

BOOKS

Aaker, D. 1984. Developing Business Strategies. John Wiley & Sons.

Leontiades, M. 1980. Strategies for Diversification and Change. Little Brown & Company.

Short, R.A. 1967. Business Mergers - How and When to Transact Them. Prentice Hall.

JOURNALS

American Bar Association Journal - November 1982

American Bar Association Journal - May 1986

CA Magazine - November 1985.

PERSONAL INTERVIEWS.

Mr D. Clegg	Tax Director, Arthur Young, Cape Town.
Mr A. Coombe	Partner, Price Waterhouse, Cape Town.
Mr S. de Beer	Partner, Adams & Adams, Pretoria. Councillor, Transvaal Law Society
Mr S. Hussey	Manager, Technical Services, Ernst & Whinney, Johannesburg.
Prof L. Kritzinger	Head of the Accounts Department and Deputy Dean of the Faculty of Commerce, University of Cape Town. Alternate Member of the Public Accountants and Auditors Board. Member of the Commission of Enquiry into Developments in the Accountancy Profession in South Africa.
Mr E. Liefeldt	Partner, Silberbauers, Cape Town.
Mr S. Ochse	Partner, Hoek & Wiehahn, Johannesburg. Past President, Transvaal Society of Chartered Accountants. Member Standing Committee on Attorney/ Accountant Liaison.

Mr C. Prismin	Partner, Prismin & Wilson, Cape Town.
Mr A. Routledge	Managing Director - Ernst & Whinney Management Services Ltd., Johannesburg.
Mr P. Strachan	Partner, Ernst & Whinney, Cape Town President of the Cape Society of Chartered Accountants.
Mr S. Symington	Partner, Arthur Young, Cape Town President of S.A. Institute of Chartered Accountants.
Mr G. Urquhart	Tax Consultant, Bowman, Gilfillan, Hayman, Godfrey Inc., Johannesburg. Former Partner, Coopers & Lybrand, Johannesburg.
Mr K. Wilson	Senior Partner, Nell & Jacobson, Cape Town Chairman of the Standing Committee on Legal Education Chairman of the Standing Committee for Ethics Chairman of the Standing Committees on Deceased Estates and Attorney/Accountant Liaison.

CORRESPONDENCE INTERVIEW.

Mr S. de C. O'Grady	Partner, Bowman, Gilfillan, Hayman, Godfrey Inc., Johannesburg.
Mr de Villiers	Partner, de Villiers, Evans & Petit, Durban.

CHAPTER 5

THE ADVANTAGES OF A MULTIDISCIPLINARY PRACTICE

CHAPTER 5

THE ADVANTAGES OF A MULTIDISCIPLINARY PRACTICE

5.1 OBJECTIVES OF THE CHAPTER

[a] To briefly outline the theoretical advantages of diversification, mergers and acquisitions;

[b] To illustrate the perceived advantages to practitioners in both professions of an integrated practice;

[c] To illustrate the perceived advantages to the clientele of the practitioners of an integrated practice.

5.2 INTRODUCTION

"Change is the law of economic life": John Galbraith, renowned economist stated this in 1971. His statement is particularly relevant in South Africa today with the business community in general facing pressure, threats and opportunities on all fronts. The two professions, law and accountancy, have not been left out when it comes to these threats. In Chapter 2 we briefly sketched the way the banks, insurance companies, trust companies etc are impinging on the traditional domain of lawyers and accountants. We have also sketched the way accountants themselves have impinged on some of the work traditionally done by lawyers. In Chapter 7 we have outlined the threats faced by the two professions because of the constraints on marketing. Intertax [the formal tie-up between Webber Wentzel and Deloitte's], and the formal association between Webber Wentzel and Shepstone & Wylie have been presented as a response by enlightened lawyers and accountants to market forces [Chapter 2]. The extortionate cost of litigation has also been presented as a threat to the legal profession [Chapter 2].

When these threats to the professions are considered, the immediate question which springs to mind is: what should the response be? We respectfully agree with Professor Kritzinger [Interview November 1986] that the professions should stop thinking of themselves as a "calling", and realise they are in business. They are thus subject to market forces and must act accordingly. We are thus of the opinion that the lawyers and accountants should plan for the future. They need some strategy if they are to remain healthy. With the greatest of respect to practitioners in South Africa, we are of the

opinion that they are far too attached to their "esteemed past", and are showing a particularly myopic attitude to the changing scene of the business community today [see Chapter 7]. The various governing bodies interviewed in this research had no opinions one way or the other to express on multidisciplinary practices. According to Mr S. Symington [Interview: November, 1986] a joint committee of accountants and lawyers has been appointed to investigate the areas of common interest of accountants and lawyers, but they have yet to produce any information, and there is no pressure on them to produce any recommendations. When we pointed out the existence of Intertax [Chapter 2] to various practitioners in Cape Town we found a singular lack of knowledge or interest in such a company. Would, for example Sol Kerzner allow a rival hotel group to establish a new concern, a new concept, here in South Africa without finding out every detail of such a company? We doubt it. In fact we are certain that he, like any other businessman worth his salt, would know all about the new concern before it came on the market. Lawyers and accountants must start thinking likewise.

Anticipation and preparation for change is the essence of strategy. The legal and accounting fraternity are at the moment subject to detrimental environmental stimuli. "Good management will be able to translate these factors into actions for change". [Leontiades, 1980 : 63]. Thus, as we argued in Chapter 2, there is no need for the professions to passively respond to environmental factors: they must be pro-active and map out their own futures. Perhaps we should draw the professions' attention to but one example of missed opportunity: IBM's name is now synonomous with computers. But it was Sperry [formerly Univac] which developed the first commercial computer. In

the 1950's there was no question of Univac's superior technological talent, product, and early lead in computer technology. Yet management was incapable of perceiving the tremendously fast-growing markets for its product, nor of effectively marshalling its organisational forces to meet the opportunity. IBM took advantage of the situation, especially the lack of strategy at Univac. Sperry, although still in the computer business, is now a very distant competitor to IBM. Do the professions want to go the same way as Sperry, or do they want to be powerful, dominant market forces? We hope it is the latter view which prevails.

5.3 STRATEGIC ADVANTAGES OF INTEGRATION: THE THEORY

Having stated that strategy is vital for planning for the future, we must examine why we feel integration is the best strategy for solving the two professions' problems. Mr Prismin [Interview November 1986], while conceding that the legal profession has problems, suggests that lawyers should be allowed to be in a position to negotiate fees with their clients, and he also believes that "costs orders" should be dispensed with. That way, he states, the amount of involvement of the client can be quantifiable and limited. Prof. Kritzinger [Interview November 1986] suggests the implementation of contingency fees as a solution, or at least a part solution to the legal profession's problems. We feel that neither of these solutions addresses the full extent of the problems facing the two professions. Reducing costs will not bring back the tax work to the lawyers for example. Allowing contingency fees will not allow the accountants to compete with the other financial institutions as discussed in Chapter 2.

Other alternative strategies which the professions could consider are as follows. They could opt for a high quality, high cost strategy, emphasising the superior quality of their work. However, as outlined already, the legal profession is already in dire straits through their extortionate costs. In addition, due to the constraints on advertising [Chapters 3 and 7], the professions are unable to promote the superior quality of their work. A multidisciplinary practice would, we submit, offer superior quality work, and be able to compete with the major financial institutions on an equal footing. The professions could opt for greater specialisation. But, again, we

are of the opinion that this will not get at the root cause of their problems. Work is already being taken from the professions: opting for greater specialisation will mean that the professions themselves are choosing to give up certain work. In addition, as Intertax has shown [Chapter 2] a Multidisciplinary Practice itself can offer highly specialised services of a superior quality. Another alternative would be to reduce costs. In Chapter 2 we alluded to the increased use of computers and audit automation. These do reduce costs in the long term. But do they solve the professions' problems? Will reducing costs alone regain the work which non-professionals have taken over? We submit that a Multidisciplinary Practice can reduce costs through pooling of services, increased automation and use of computers, and at the same time be able to compete on a better footing with the financial institutions. The professions could opt for increasing their international links. The accountants already have extensive international links, and Webber Wentzel and Shepstone & Wylie [Chapter 2] have shown the way to law firms in the increase of internationalism. However, a Multidisciplinary Practice would be able to utilise international links as well, and we are of the opinion that a combined practice would be able to utilise international links far better than a single practice, in certain fields, eg international tax problems [see Chapter 4: Synergy]. The professions could alternatively employ "para-professionals" to do certain work. This again, we submit would not solve their problems. The whole essence of competing with the non-professionals, is on the basis of the superior service offered by the professions. Thus, given the synergy between the two professions [Chapter 4] and given their mutual problems, we

respectfully submit that there is no better alternative than their coming together and presenting a united front. Far better that the professions fight the threats together as a team than fight each other as well as the threats. The professions, do after all, share many common interests [see Chapter 4].

Speaking in classic marketing terms, the two professions are in the service industry. By staying with a single industry, a company limits its growth to the automatic growth of the market or to an increase in its market share. Companies wishing to sustain or improve on past growth have to capture market share from competitors - not an easy task in the highly competitive environment typical of a mature market. Many large corporations have chosen not to accept these limitations or options. In order to sustain satisfactory growth rates, they have diversified into other fields [see Chapter 2 - Trends of Accountants]. 'Mergers have played a key role, and the inescapable fact is that diversification is now a corporate way of life' [Leontiades, 1980 : 7]. The author is here referring to industrial corporations, and not service industries, but we submit, the same theory applies. Law and Accountancy are mature industries, and merging is necessary if they are to answer the threats facing them, let alone grow. It must be borne in mind that the trend of the Big Eight accounting firms has been to grow and absorb as they see fit [see Chapter 2]. Thus the accounting firms might consider merging within the profession and merely employing in-house lawyers as a possible solution to their problems. But then they would still be faced with the problems of employing "non-practising attorneys" with all the inherent drawbacks [see Chapter 3]. Bearing in mind that the

professions must compete with the financial institutions who have vast resources including the ability to advertise, we feel that for accountants to merge within their profession and absorb lawyers would not solve their problems. To merge and form a Multidisciplinary Practice with the professional status attached thereto, would, we submit, offer a far stronger unit than one employing in-house attorneys.

A motivation for merger actions between companies would be that they can forge a broad base of market power, enjoy efficiencies of production, distribution and administration, permitting lower unit costs and thus strengthened competitive positions, synergy growth [2+2=5], and the swift addition in one package of facilities, products, personnel, processes etc. In terms of merging of accountants and lawyers, the synergistic effect is crucial. Here, as discussed in Chapter 4, the two professions apply different skills to the same problems, offering a superior quality service than before. The advantage of reduced administration costs, discussed later in this chapter, can also be applied to the two professions. The author, R.A. Short, in his book "Business Mergers - How and When to transact them", pg 39, highlights the following point on acquisitions. "Sometimes it is necessary in one move to add the services of proven talent to bolster an existing team. When this does arise, merging for the right talent alone can be as much justification as absorbing a company for its facilities, products or distribution. Recruiting top talent can be too competitive and too slow". The same author mentions that diversification is closely linked to an improvement in the competitive position of companies: "diversification should be con-

sidered in terms of economy, and the key words here are efficiency in overall management". Again, although the author is discussing industrial corporations, we feel the theory is particularly apposite to the two professions. South Africa is facing a skills shortage, and in a competitive environment the pooled talents of top professionals surely justify close association, if not outright merger. Merging on this basis was sufficient justification for Webber Wentzel and Deloittes [Intertax - Chapter 2]. In addition according to Mr Merret, an attorney in Durban [correspondence interview:November, 1986], most professional legal practices do not have efficient infrastructures in terms of the "business" of their profession. Very few practices [mainly large] are run by good administrators. We feel integration with accountants should to a large extent overcome this problem. The accountants, through the diversity of their operations, and especially through their management advisory services, are far more au fait with the business administration of a practice than lawyers are, and this is particularly so in the fields of computerisation and office automation. Thus integration in this sense would definitely benefit the legal profession. The accountants, on the other hand, would benefit by having the legal expertise within the business.

James M. Gavin, President of Arthur D. Little, Inc. provides the following sage advice, which the two professions could well consider. "A fundamental relationship in the affairs of man equates opportunity with change. Change provides opportunity for a new approach to product development, a different environment for the emergence of human talent and a continuing opportunity for industry and commerce to

become stronger and more creative. All these interactions of a dynamic business environment reflect our motivation for profit and personal satisfaction. Within the framework of the law and the ethics of business conduct we should utilise all our resources and methods to continue the evolution of improvement, creativity and viability. In a world that daily grows smaller, more populated and more complex, corporations must look beyond conventional boundaries if they are to make the contributions for which society rewards them in the form of profit. A joining of units of strength under proper circumstances should be a desirable strategy in business." [Drayton, Emerson & Griswold, 1966, foreword]. In view of the threats to the professions, we feel the circumstances, as alluded to above, are now right for a joining of the two professions as units of strength. As Mr Gavin states, the two professions are being rewarded by society in the form of not negligible profits, and thus society can surely expect the professions to look beyond conventional boundaries if it is in society's interests. However, here it is necessary to point out that in Chapter 6, we explore the possible drawbacks, in the sense that large concerns might well desire a second opinion in important matters, and thus a single unit would not be the best structure.

A further possible advantage of mergers/acquisitions highlighted by Drayton, Emerson & Griswold, is that the motivation of key personnel can be significantly increased by providing the individual with greater opportunities to apply unused skills or knowledge. This point, we feel, is of relevance when looking at a Multidisciplinary Practice. Practitioners from both professions will be faced with

diverse, and at times diametrically opposed, viewpoints, and they will thus be forced to explore arguments and perhaps think a little bit more deeply about problems than if they were merely viewing things from one side only. This could be a significant motivating factor on personnel. Against this must be weighed the possible drawback of the individual being lost in a big organisation [see Chapter 6].

Thus far, it can be seen that no direct theory as to the advantages of a Multidisciplinary Practice has been referred to. However, we are of the opinion that much of what applies to the ordinary business community applies to the two professions, who are in the service industry. The theoretical advantages, as outlined above ie economies gained through shared administration, competitive advantage gained through acquisition of skills, motivation of key personnel, diversification as a key factor for growth [and survival] and synergy growth are, we feel, all highly relevant as potential advantages of a Multidisciplinary Practice. Practitioners in each profession, in viewing the future, should thus be asking themselves the following questions: does the other profession have managerial skills which would be useful to acquire? Are their services of value to our firm? Can economies and improvements be achieved through amalgamating resources? What is the other's reputation like? Have we estimated future trends in their markets? Are their objectives consistent with ours? Are there significant differences in administration between our two practices, and can any services be consolidated [eg personnel]? How are we going to promote the new company to the public? We respectfully submit that the answers to these questions, when weighed up against the possible disadvantages of a Multidisciplinary Practice [Chapter 6], and combined with the synergy

of the two professions [Chapter 4], support our argument that a Multidisciplinary Practice is not only viable in terms of the theory, but also desirable.

In Chapter 7 we discuss the fact that marketing is relevant to all the professions and we highlight the reasons why practice expansion as an integral element of marketing is vital for every firm, not just as a means of expansion but as a means of preventing the loss of existing clients and business. These reasons, although discussed more fully in Chapter 7, should be noted here as well, as they are highly relevant in terms of acquisitions and mergers [Wilson, 1984 : 5]. [1] Survival - the professions have not survived unscathed from world recession. [2] Competition - clients of the traditional professions are being increasingly and indeed energetically wooed by non-qualified competition, by other professions whose traditional boundaries are no longer seen as barriers and by products which substitute for services. [3] Inflation - increased revenue that is not ahead of inflation means stagnation, decline and ultimate demise. [4] Technology - in all the professions technology is creating profound changes in traditional methods, representing both threats and opportunities. [5] Changing client attitudes - the humility which typified many clients, private and commercial, in the face of the apparently overwhelming expertise of the professional is vanishing fast.

In terms of the theory then, formulation and implementation of strategy is essential to survival in an essentially hostile environment. We have shown how acquiring or merging can be advantageous to a business concern. In terms of the theory, as outlined above, we

are of the opinion that a Multidisciplinary Practice is not only desirable, but necessary to the professions today. Bearing in mind that an enterprise should create and keep customers, we now turn to the attitude of the practitioners interviewed for this research to see what they perceive as being the advantages of integration, and to what extent their attitude reflects the theory outlined above.

5.4 THE PERCEIVED ADVANTAGES TO PRACTITIONERS IN BOTH PROFESSIONS OF AN INTEGRATED PRACTICE.

The practitioners who expressed opinions on multidisciplinary practices appear to agree on three basic points: to be advantageous to them, a Multidisciplinary Practice would have to offer increased profits, decreased costs, or a superior quality of service. This supports the advantages of merging, diversifying and acquiring outlined above. The practitioners do, however, differ in their opinion as to what extent a Multidisciplinary Practice could influence these factors.

Mr Wilson [Interview:September,1986] is of the opinion that it would be useful for each practitioner to bring different expertise to bear on eg tax problems, but he feels that a multidisciplinary practice would be of no great significance in improving the quality of service offered. Mr Wilson is of the opinion that the only test for the desirability or otherwise of a multidisciplinary practice is whether it would be to the benefit of the general public and not whether the profession can make more money. This opinion, with respect, although noble, appears to be out of touch with reality. And it is this kind of thinking which we feel will have to be overcome if the professions are to survive. We have argued [Chapter 3] that it is highly desirable for a multidisciplinary practice to be held to the ethical guidelines of the two professions and in this light they will offer a superior service to the public than the other financial institutions. Increased profitability to the professions would not necessarily mean more money out of the pockets of the general public -

the professions would merely be regaining work which is rightfully theirs, and the public will be paying them instead of some other institution. Mr Wilson does, however, concede that self-preservation of the two professions will lead to closer working together and association. As Mr E. Liefeldt [Interview:August,1986] states: "Perhaps the professions should get together now instead of fighting each other in various fields".

Prof. Kritzinger's views [Interview:November,1986] have been referred to in detail in Chapter 2. He sees distinct advantages in "one-stop shopping". He sees the pooling of talents as being a major benefit here, as the disciplines bring their different skills to bear on the problems they deal with. Mr Prismin [Interview:October,1986] shares this viewpoint. He is of the opinion that the administrative costs would be lowered to an insignificant degree by shared services, and thus he sees the advantage to the practitioner as being purely one of a superior quality service. Mr Prismin further isolates an advantage to the legal profession of association with accountants: they will regain work taken from them by the accountants [eg tax]. Although Mr Prismin is of the opinion that the potential cost saving to the practitioners of pooled services would be insignificant [and hence also the cost saving to the client], he does state that the practitioners would view profitability to themselves as far more important than cost saving to the client. "I can assure you that counsel who marks his brief doesn't take into account considerations of the client: it's a tragedy, but one must face brutal truths in the matter". This, then, supports our contention that Mr Wilson's views, although desirable and praiseworthy, ignore reality. Lawyers and accountants are in

business to make profits, and if the opportunity to increase profits presents itself they should take advantage of it.

The profitability aspect is further highlighted by Mr Routledge [Interview:July,1986]. He states that he can only see merging as being a viable proposition if it increases profits, otherwise the firm would acquire inhouse skills as needed. If the increased profitability to the firm could be passed on to the customer in the form of savings, that would be desirable, but of secondary importance to profitability to the firm. Mr Routledge also sees an advantage in integration, or close association, in that as the personalities involved get to know each other better they will become more efficient and thus offer a time and cost saving to the client. He thus sees an expanded and superior quality service being offered by the practitioner, offering a distinct competitive advantage. He is supported on this point by Mr de Beer [Interview:July,1986], Mr Ochse [Interview:July,1986], Mr Urquhart [Interview:July,1986], as well as by senior spokesmen of Webber Wentzel and Deloitte Haskins & Sells, commenting on the advantages of Intertax [Chapter 2]. Mr Coombe [Interview:September,1986] sees a further advantage of merging, as opposed to merely acquiring inhouse skills, as being that not just people would be acquired, but also a complete infrastructure of skills and administrative know-how. Mr Coombe also thinks that the rationalisation of services would be of definite benefit to the practitioners in terms of time and cost efficiency. Fixed costs, rental etc, could all be lowered by shared facilities. Another advantage mentioned by Mr Coombe is that a combined practice could, through the regularity of the audit function, obtain regular legal work. This

would offset the different client base and irregularity of legal practitioners' work mentioned by various practitioners.

Mr Clegg [Interview:June,1986] thinks that profitability to practitioners will be negligibly affected by a combined practice. However he also, like other practitioners, sees a significant saving in time, due to the removal of double briefing, and this will free the practitioners from perhaps duplicating meetings, reporting information etc. He further points out the advantage of a merged practice as opposed to merely acquiring inhouse skills, as being that the practitioners would still be regarded as members of their profession, and thus their opinions would be well respected. He feels that these practitioners would have greater legitimacy in the eyes of people than those who are regarded as having left the profession. He further supports Mr Symington [Interview:November,1986] that these professionals would be more likely to keep in touch with the latest developments in their fields than those practitioners who have gone the in-house route.

Mr Strachan [Interview:November, 1986] sees the benefits of a combined practice as being in the time and cost savings, and the competitive advantage to be gained by having pooled talents. He thinks the practitioners should adopt the approach of seeing where best their pockets can be filled, and then choosing to grow in that direction. He points out that a combined practice would reap the benefits of not having to "sub-contract" to the other profession/practitioners due to lack of skills. The combined practice would thus line their own pockets instead of someone else's.

It can thus be seen that the practitioners interviewed do foresee great advantages in a merged practice, or at least in close association of the two professions. Their viewpoints can be summarised under the following headings:

[a] One-stop shopping: the client is able to approach and brief a single firm in relation to problems having both legal and accounting implications;

[b] Cost benefits: fixed costs are lowered through the sharing of facilities. Further to this, close co-operation between the professions produces time and cost benefits which may be passed on to the client;

[c] Communication: working together as a team provides better understanding, complements relative strengths and offsets relative weaknesses;

[d] Survival, and potential growth, for the professions in future will derive from greater specialisation and an integrated practice is a means to achieve this;

[e] Bearing in mind that the professions are in the service industry, selling knowledge [Osche, Interview July 1986], the better the service the better the competitive advantage.

We are thus of the opinion that a Multidisciplinary Practice shares the theoretical advantages of diversification, merging or acquiring outlined in the first part of this Chapter. The potential for cost saving, increased profitability, but most importantly, better quality service are all present, and thus we feel that the formation of multidisciplinary practices is an essential strategy for the survival of the professions. The two professions can no longer "go it alone".

However, we do respectfully agree with Mr Wilson [Interview September 1986] that it is insufficient motivation for the formation of multidisciplinary practices if the professions alone are to benefit. It is thus necessary to explore the perceived benefits to the clientele of the two professions to identify whether a Multidisciplinary Practice is not only advantageous but desirable in South Africa.

5.5 THE PERCEIVED ADVANTAGES TO THE CLIENTELE OF THE TWO PROFESSIONS OF AN INTEGRATED PRACTICE

The advantages to the customers of practitioners in both professions follow logically on the perceived benefits to the practitioners themselves, as outlined above. The client will have the convenience of "one-stop shopping", being able to approach a single concern for problems requiring both legal and accounting expertise. This, then, would save the client time, a great concern of the modern businessman. The cost benefits gained by the integrated practice would also be passed on to the clients. Although the practitioners interviewed felt these savings would be minimal, we respectfully submit that any saving passed on to a client is of importance and cannot be regarded as being insignificant. Possibly the greatest perceived benefit to the clients, though, would be the superior quality service they would obtain from the integrated practice. That this is of importance to the clientele of the professions is borne out by the fact that, according to senior spokesmen of Deloittes and Webber Wentzel, Intertax is being "snowed under" with work [see Chapter 2]. The benefits of an integrated practice are thus being recognised by the clientele of the two practices.

A further possible advantage highlighted by Mr Ochse [Interview:July, 1986] and Mr Prismin [Interview:October, 1986], is that a combined practice would be of great advantage to the "emergent black businessman". Through no fault of their own, these businessmen lack many of the skills and knowledge of their white counterparts. Both these practitioners feel a "one-stop shop" would be able to assist

these businessmen to a greater degree than separate concerns. Many of the problems facing them have legal and financial implications, and thus a combined practice is exactly the type of service needed. We respectfully feel that in view of the changing face of South Africa, this is further motivation for the two professions integrating. The black businessman is coming more and more into his own, and if he feels the need for a combined practice is there, he will surely exert pressure on the professions to provide such a service. The professions should face that challenge now.

5.6 CONCLUSION

In this Chapter we have presented the theoretical advantages of mergers, acquisitions and diversification. We showed as well that the perceived advantages of a Multidisciplinary Practice support, and are linked to, the advantages of diversification and merging. We further presented the perceived advantages to the clientele of the two professions of an integrated practice.

We are thus of the opinion that, given the threats to the profession, an integrated practice is the best strategy to adopt for their survival. Unless lawyers want to find themselves as a small band of specialists on the sidelines, they must take bold steps now to integrate. The accountants as well, although less restricted than lawyers, and bolder in their approach [see Chapters 2 and 3] must also be bold and present a united front to combat the threats facing them. We respectfully submit that the perceived advantages to the public as well as to the professions in terms of convenience, superior quality service, time and cost benefit, etc, are all of sufficient magnitude to warrant integration. The professions must overcome their "shields of conservatism", their petty jealousies and their infighting, and start thinking like businessmen. What better way than to integrate their services? If however the professions prefer to stick to their "esteemed past" we would urge them to ponder the following: "Self conceit may lead to self destruction" [Aesop's Fables - The Frog and the Ox]. The lawyers have already had a taste of this - the tax work has been taken from them by accountants. Without change, is it not probable that both professions will further self-destruct?

REFERENCES AND BACKGROUND READING TO CHAPTER 5

BOOKS.

Aaker, D.A. 1984. Developing Business Strategies. John Wiley & Sons.

Alberts, W.W. and Segall, J.E. 1966. The Corporate Merger. University of Chicago Press.

Drayton, C.I.[Jr], Emerson, C, Griswold, J.D. 1966. Mergers and Acquisitions : Planning and Action - A Research Study and Report prepared for the Financial Executives Research Foundation. U.S.A.

Faulke, R.A. 1956. Diversification in Business Activity. Dun & Bradstreet.

Hampton, D.R., Summer, C.E., & Webber, R.A. 1982. Organisational Behaviour and the Practice of Management. Scott Forsman & Company.

Leontiades, M. 1980. Strategies for Diversification and Change. Little, Brown & Company.

Levoy, R.P. 1970. The Successful Professional Practice. Prentice Hall.

Porter, M.E. 1980. Competitive Strategy - Techniques for Analysing Industries and Competitors. The Free Press.

Short, R.A. 1967. Business Mergers - How and When to transact them. Prentice Hall.

JOURNALS.

McCarthey, T. 1986. Lawyers Differ on Mixed Partnerships. Accountant, 27.

Thomas, D.R.E. 1978. Strategy is Different in Service Businesses. Harvard Business Review.

PERSONAL INTERVIEWS.

Mr D. Clegg	Tax Director, Arthur Young, Cape Town.
Mr A. Coombe	Partner, Price Waterhouse, Cape Town.
Mr S. de Beer	Partner, Adams & Adams, Pretoria. Councillor, Transvaal Law Society
Mr S. Hussey	Manager, Technical Services, Ernst & Whinney, Johannesburg.
Prof L. Kritzinger	Head of the Accounts Department and Deputy Dean of the Faculty of Commerce, University of Cape Town. Alternate Member of the Public Accountants and Auditors Board. Member of the Commission of Enquiry into Developments in the Accountancy Profession in South Africa.
Mr E. Liefeldt	Partner, Silberbauers, Cape Town.
Mr S. Ochse	Partner, Hoek & Wiehahn, Johannesburg. Past President, Transvaal Society of Chartered Accountants. Member Standing Committee on Attorney/ Accountant Liaison.

Mr C. Prismin	Partner, Prismin & Wilson, Cape Town.
Mr A. Routledge	Managing Director - Ernst & Whinney Management Services Ltd., Johannesburg.
Mr P. Strachan	Partner, Ernst & Whinney, Cape Town President of the Cape Society of Chartered Accountants.
Mr S. Symington	Partner, Arthur Young, Cape Town President of S.A. Institute of Chartered Accountants.
Mr G. Urquhart	Tax Consultant, Bowman, Gilfillan, Hayman, Godfrey Inc., Johannesburg. Former Partner, Coopers & Lybrand, Johannesburg.
Mr K. Wilson	Senior Partner, Nell & Jacobson, Cape Town Chairman of the Standing Committee on Legal Education Chairman of the Standing Committee for Ethics Chairman of the Standing Committees on Deceased Estates and Attorney/Accountant Liaison.

CORRESPONDENCE INTERVIEW.

Mr D.K. Merret — D.K. Merret Associates, Johannesburg.

CHAPTER 6

THE PROBLEMS AND DISADVANTAGES OF A MULTIDISCIPLINARY PRACTICE

CHAPTER 6.

THE PROBLEMS AND DISADVANTAGES OF A MULTIDISCIPLINARY PRACTICE

6.1 OBJECTIVES OF THE CHAPTER:

[a] To briefly sketch the theoretical problems of merging and integrating,

[b] To illustrate the perceived disadvantages to practitioners in both professions of an integrated practice,

[c] To illustrate the perceived disadvantages to the clientele of the practitioners of an integrated practice,

[d] To ascertain whether the problems and disadvantages are a substantial threat to a Multidisciplinary Practice.

6.2 INTRODUCTION.

"It must be considered that there is nothing more difficult to carry out, nor more doubtful of success, nor more dangerous to handle, than to initiate a new order of things".

[Machiavelli, The Prince].

In this report so far we have highlighted the trends towards multidisciplinary practices [Chapter 2], the constraints [Chapter 3] and the synergy and advantages of a multidisciplinary practice [Chapters 4 and 5]. In the preceding chapter we argued why we feel a multidisciplinary practice is the best strategy for the professions to adopt. However, although we are of the opinion that a Multidisciplinary Practice is a desirable concept, there are certain problems which have to be addressed.

The professions, and practitioners, under threat from outside forces, will obviously have to weigh up the synergistic benefits and perceived advantages of a multidisciplinary practice against the problems to see if it is a viable concept. The problems presented in this chapter should be viewed along with the ethical and legal constraints presented in Chapter 3, as in many instances the two areas overlap. However, in this Chapter we are concerned with the "organisational" and "people" problems more than strict legal and ethical problems, and will thus approach the subject matter from this broader perspective. As in Chapter 5, no direct theory to multidisciplinary practices pertains. However, much of the theory applicable to diversification,

acquisition and mergers is pertinent, and this is the material we feel is of relevance to this chapter.

6.3 PROBLEMS WITH MERGERS AND ACQUISITIONS: THE THEORY.

"Never acquire a business you don't know how to run" - Robert W. Johnson of Johnson & Johnson [Aaker, 1984:313]. In the previous chapter we stated that diversification is now a corporate way of life [Leontiades, 1980:7]. However, diversification can be risky. One problem which could be encountered is that an apparent relatedness does not exist, or is inadequate to compensate for the differences. As a result it becomes impossible to integrate the two firms [Aaker, 1984:300]. Thus here, although areas of synergy between law and accounting do exist [Chapter 4], these areas could be insufficient to allow satisfactory integration. Another possible problem is that although sufficient commonality might exist enabling the two firms to integrate, the firms lack the motivation to learn about each other's business. This might be particularly so if the one firm is dominant. Peter Drucker: "The five rules of Successful Acquisition", the Wall Street Journal, October 15, 1981, states the following: "An acquiring company must respect the product, the market and the customers of the company it acquires, ie there must be a temperamental fit." In a multidisciplinary practice, then, the position might arise that after integration the two disciplines continue to go their own way, without genuinely integrating. This might be as a result of professional jealousy, personality differences etc.

A further potential problem highlighted by Aaker, D.A., is that an acquiring company might find its acquisition to be overvalued. For example, the company has seen the areas of synergy and the perceived advantages of acquisition, but has overlooked environmental threats;

strategic liabilities and weaknesses of the company. Its acquisition thus turns out to be an unpleasant surprise. A further problem flows from this: if the diversification or acquisition is unsuccessful, it may actually damage the original core business by directing attention and resources away from it. Thus an accounting firm merging with a law firm might find itself sacrificing auditing work in order to make the integration successful. A further disadvantage would be that an acquisition is costly. A firm of accountants might find it far cheaper to employ a team of inhouse attorneys, rather than acquire a whole firm. Acquisition also brings with it the problems of integrating two organisations that might be very different in substance and style. The result could be an entity very difficult to manage [Aaker, 1984:315].

It must be borne in mind that every organisation consists of people - people with fears, ambitions, anxieties, insecurities, abilities and potentials. This is where a great problem area in any form of integration lies: people are always afraid of change.

> "I find the people strangely fantasied,
> Possess'd with rumours, full of idle dreams,
> Not knowing what they fear, but full of fear".
>
> King John [Hampton, Summer & Webber, 1982:729]

When people are afflicted with deep-seated anxieties they tend to return to earlier work habits, or else resign without waiting to see what will happen; some even begin plotting how to achieve personal

goals long subdued in the old order. "The anxiety generated by change of ownership goes much deeper than a fear of losing a paycheck. Without putting it into words many key people feel that that which has made life worthwhile for them is being questioned, and their weekday faith is being threatened. Who they are and what they are here for can no longer be taken for granted". [Myles and Montgomery, 1962:227, quoting from Management Psychologist, Rohrer, Hibler and Replogle, February 1960:1, No 5]. Therefore the values to be gained by acquisition depend largely upon the skill with which the administrative problems of integration are handled.

Further possible problems of integration are that the two organisations have very different administrative procedures. An example here is the accounting firms' commitment to computing, a field where the lawyers are still dragging their heels. Mr Miller [1963:1] is of the opinion that since an acquisition can be made by the stroke of a pen, there may be suddenly thrust upon a management team a new commitment which the organisation is unprepared to support. Thus he argues that an acquisition contains a rapid commitment power, unexpected business situations and ambiguous supervisory relationships, rather than the slow processs of adaptation to the unknown from known factors through direct supervision as in internal growth. Drayton, Emerson and Griswold [1967:41] emphasise the following problem areas. Sometimes acquisitions demand a lengthy assimilation period and incur problems of far greater magnitude than would a different method of reaching the same objectives. However, mergers and acquisitions do often enable a company to reach its goals much more rapidly than do other means. They further state that although a merger or acquisition may entail

less risks than an internal programme [the company being acquired has already produced known results], the problem lies in properly assessing what the company has accomplished and in ensuring that there will be a continuation of the conditions under which these results have been produced. The authors also highlight the problems of high cost of acquisitions. But an acquisition can enable a company to reach its objectives economically as the acquired company might have certain abilities and market positions such that the acquirer is saved extensive costs. Although a company may through acquisition obtain resources which could not be duplicated or obtained elsewhere, can the company be sure that the people will stay? In addition, along with the desirable resources obtained, the company will also obtain unwanted resources. It is thus faced with the problem of what to do with them. Although the motivation of key personnel may be increased by merging, it might just as well be decreased as people feel they lose their identity in a large organisation.

From the above discussion it becomes clear that the fundamental problems lie with "organisational" and "people" issues. As we are of the opinion that the "people" issues are the main problem areas in a Multidisciplinary Practice, it is relevant here to look at the theory a little more closely. As the problem lies fundamentally with resistance to change, we must examine why people resist change. Hampton, Summer and Webber propose the following reasons [1982:695]. People reject the change agent ie they are unhappy with the forces for change. Thus, for example, we see the attitude amongst practitioners that economic desire for increased profits should not be a reason to change the old order of things. People might be happy with the

present and perceive no threat. They would thus see no reason to change. The resistance could be based on the unwillingness of people to admit there is a better way of doing things. This would imply that the old way of doing things was wrong. A classic example comes from the history of medical science. "Ignez Semmelweis was a physician in charge of the maternity clinic at Vienna University Hospital in 1847. At the time the death rate in childbirth was very high - over 12% at his hospital. He sharply reduced this rate to approximately 1% by 1848 by having the physicians disinfect their hands in carbolic acid before examining patients. Before this time, attending doctors had just lightly washed or wiped their hands on their aprons and moved directly from pathology examinations [even autopsies] to women in labour. The physicians did not like the change because the acid irritated their skin and Semmelweis was dismissed from his post in 1849. By the following year however he had begun to repeat his success at the maternity ward in Budapest achieving mortality rates of less than 1%. He published his findings in 1861 but once again he was rejected by leading medical authorities. His innovation was only accepted forty years later, due to the efforts of the English physician Joseph Lister. The resistance of the medical profession was in large part due to the fact that they did not want to admit they were wrong, and that they themselves had been the agents of infection. This would have meant a change in self-image that was inadmissable in those times; besides which in the early nineteenth century a physician derived status from pus and blood on his apron - it showed he was busy and in demand". [Hampton, Summer and Webber, 1982:696]. Thus the legal profession today might be resisting change because it would mean that in the past their

methods have been wrong. Doing away with "costs orders" for example, might imply that these were wrongly used in the past.

A further reason for resistance to change is the dominance of the past. People can be so busy with their past or current problems that they do not take time to explore ways of preventing future problems. This, we feel, is particularly relevant to the legal profession in South Africa. Conservative by nature, they appear loathe to look ahead and pre-empt their problems by adopting strategies designed to solve their past problems and allow them to grow in strength. Another problem is that people like to protect their established authority. They fear a changed culture will result from organisational changes. This again is of relevance to the legal and accounting professions, both of which are afraid to give up or lose their established areas of authority to any other group.

The above, thus, outlines the theoretical problems or disadvantages of integration. It is now necessary to examine to what extent this theory relates to Multidisciplinary Practices, and to what extent the problems posed are real and not imaginary.

6.4 THE APPLICATION OF THE THEORY TO A MULTIDISCIPLINARY PRACTICE.

The most obvious potential problem to present itself in a Multidisciplinary Practice is that the areas of synergy are insufficient to warrant integration. However, as we argued in Chapter 4, many areas of synergy do exist: of that the practitioners and ourselves are ad idem. We are of the opinion that, especially in matters regarding tax, the synergy is great enough to warrant integration. In fact we are of the opinion that in tax and commercial matters the two professions cannot operate independently of one another and offer as good a service as an integrated practice.

The next obvious problem to rear its head is that after integration the two firms concerned do not integrate efficiently because they do not get to know each other's business. This, we feel, can be overcome: the two will be getting together for a specific reason - mutual benefit, and if the people concerned are true professionals they will surely try to operate as efficiently as possible. If this entails learning each other's business, we feel they will do so. In addition, in a multidisciplinary practice, be it an ad hoc project team or a merged entity, the client and product offered are essentially the same as before. Further, Mr O'Grady [Correspondence Interview November, 1986] states that "no attorney can today practice law in areas other than straight-forward litigation and conveyancing without a good knowledge of accounting. No accountant can effectively advise the client on tax or estate planning without a knowledge of the law". Thus we are of the opinion that because the two professions are in essence complementary, this problem is of insignificant relevance.

The problem highlighted by Aaker, that an acquiring company might find its acquisition to be overvalued, is we feel, not relevant to a Multidisciplinary Practice. As we have argued throughout, the two professions need to unite to present a harmonious front, and two firms will surely examine each other's strengths and weaknesses before integrating. As the two are facing common threats, we feel that unpleasant surprises should be minimal. The other disadvantages highlighted by Aaker, viz that acquisitions, if unsuccessful could damage the core business [eg auditing], and that acquisitions are costly, we concede as being distinct possibilities in a Multidisciplinary Practice. However, as we perceive a multidisciplinary practice as being a merged entity, be it project team or two firms, we do not perceive the costs as being disadvantageous. Nor do we perceive a failed merger as damaging the core business of the two entities beyond repair. If Intertax [Chapter 2] fails, we do not think that Webber Wentzel or Deloittes will lose auditing or conveyancing work as a result thereof. Further, although it might be cheaper for firms to acquire inhouse skills, Multidisciplinary Practices do have distinct advantages over this. [See Chapters 3 and 5].

Problems with regard to administrative procedures, eg computing, are, we feel, relevant, but can be overcome. After all, it is the pooling of talents that makes a multidisciplinary practice such a desirable concept, and the shared administrative costs is just one area of perceived benefit [see Chapter 5]. The problem described by the author, Miller, above, is we feel not relevant to a Multidisciplinary Practice. A Multidisciplinary Practice would be formed for very specific reasons, synergistic benefits being one of them. Thus

we do not foresee an organisation being unable to support the new commitment. The problems highlighted by Drayton, Emeson & Griswold above, have been answered above as well.

We are therefore of the opinion that although most of the theory is applicable to Multidisciplinary Practice, in the "organisational" sense these problems are not insurmountable. When they are viewed against the synergistic benefits [Chapter 4] and the perceived advantages [Chapter 5] of a Multidisciplinary Practice, we feel that the problems and disadvantages are far outweighed by the advantages. We are however of the opinion that the biggest problem lies with the "people" issue. This was also alluded to in Chapters 2 and 3: professional jealousy and historical mindset. As the people problems are also perceived to a large extent by the practitioners interviewed, we will discuss these problems under the next section.

6.5 THE PERCEIVED DISADVANTAGES TO PRACTITIONERS AND PROBLEMS OF A MULTIDISCIPLINARY PRACTICE.

The practitioners interviewed expressed differing viewpoints on the problems peculiar to a Multidisciplinary Practice. However, their opinions would appear to highlight the following problem areas:

[a] A different culture exists in each profession;

[b] Objectivity: A client would rather have recourse to separate firms which to some degree exert a check on the quality of each other's work;

[c] There is insufficient need presently and in the foreseeable future to change the status quo;

[d] Confidentiality: The attorney and client privilege does not exist in the same manner as between an accountant and his client. Integration therefore may prejudice the protection afforded to the attorney and client relationship.

Practitioners differ markedly in their views on the following:

[e] A law firm consists of individuals and the standard of work depends on the individual rather than the firm;

[f] Attorneys have a larger client base than accountants by the nature of their relationship to the client;

[g] Attorneys/Accountants in an integrated environment would lose their competitive "cutting edge";

[h] Hierarchy is not an element in law firms in the manner that it exists in accounting firms: this may present problems in structural integration.

We can now examine the individual viewpoints more closely.

Mr Routledge [Interview:July, 1986] views the problems of merging on a fullscale basis as being too vast to warrant a merger. He sees general problems of the following nature: fee structure, clash of personalities, manpower planning and organisational structure. As we mentioned in Chapter 5, Mr Routledge is of the opinion that sufficient synergy does lie for merging on an ad hoc project team basis. With respect, apart from the personality problems we don't foresee the other problems mentioned as being significant at all. Fees could be shared on an agreed basis if the legal constraints on fee-sharing are dispensed with. Another alternative would be to pay fees in the form of dividends payable by the company. Manpower planning, we submit would be no greater a problem in a Multidisciplinary Practice than in the normal accounting or legal firm. In fact it might become less of a problem with the overlap of skills within the integrated practice. As far as organisational structure is concerned we again are of the opinion that this is not a great problem. The only problem that the integrated practice might have is whether to integrate on a corporate or partnership basis, or as a close corporation etc. But, we respectfully submit, that is for the parties concerned to decide upon.

Suffice it to say that we feel that organisational structures per se should not be a great problem.

Mr de Beer [Interview:July, 1986] views the complete merger of the two professions as impossible. He thinks the two professions are too incompatible in terms of culture and mindset. However he is of the opinion that a separate company along the lines of Intertax [Chapter 2] ie over and above the two professions but incorporating both, is a highly desirable and practical concept. He feels that the formation of a company like Intertax should present no practical difficulties.

Mr Osche [Interview:July, 1986] also in favour of multidisciplinary practices, foresees the following problem areas. He doubts whether a fullscale multidisciplinary practice would be able to keep people fully employed, and if it cannot do so it is obviously difficult in cost terms. He also foresees the demand for a Multidisciplinary Practice as being only in the larger cities in South Africa. However, this agrees with our viewpoint. We are not advocating that multidisciplinary practices are desirable or viable in areas like the platteland. The scope of services needed is obviously insufficient to warrant integration. But in certain areas, eg tax [Chapters 4 and 5] we are of the opinion that a Multidisciplinary Practice would have no trouble employing people fulltime. Spokesmen of Deloittes and Webber Wentzel have supported this viewpoint, where they have stated that Intertax is being "snowed under" with work [see Chapter 2].

Mr Urquhart [Interview:July, 1986] is of the opinion that a lawyer in a multidisciplinary practice would lose his cutting edge. He would

not be exposed to the day to day legal problems that he would if employed in a legal practice. This we can agree with to a certain extent. However, as we outlined in Chapter 3, surely it is far better for the lawyer and accountant to be part of the profession whereby the profession maintains their standards than to be merely inhouse, where the desire to maintain standards would not necessarily be the same. We thus respectfully submit that this would be less of a problem in a Multidisciplinary Practice than a practice which acquires inhouse skills. Mr Urquhart sees a definite difference in the corporate cultures of the two professions, leading to a problem with integration. This is a "people" problem, and we will discuss it later under that heading. Mr Urquhart does highlight a very important problem however, and one which could hold a lot of weight for practitioners weighing up the pros and cons of a Multidisciplinary Practice. That is the problem of objectivity. He states that in the case of very large business concerns, they feel safer and are prepared to pay extra to get a second opinion. They would thus see no benefit in going to a "one-stop shop" for service, as they would want a second opinion anyway. This, we concede, is a potential problem, but if the benefits of a "one-stop shop" are examined [Chapters 4 and 5], we respectfully submit that the larger firms might feel it advantageous to employ one multidisciplinary practice for the benefits to be obtained, and then, if desired, they can always obtain their second opinion from a second practice, be it legal, accounting or multidisciplinary. Further, as discussed in Chapter 3, we are of the opinion that accountants do not have the requisite skills to monitor the work performed by lawyers, and vice versa. Therefore, we respectfully submit that the problem of objectivity is without sub-

stance. Thus we do not foresee this as an insurmountable problem area. Mr Urquhart is of the opinion that a law firm consists of individuals and the standard of work depends on the individual rather than the firm. This is different to accounting firms, he states, where the client goes to the firm rather than the individual. Here he is supported by Mr O'Grady [Correspondence Interview:November 1986]. This point, with respect, is debatable. Many practitioners interviewed were in conflict on this particular issue, eg Mr Coombe [Interview, September 1986] and thus we do not foresee it as presenting any great practical difficulties to integration. Mr Urquhart and Mr O'Grady further believe that: "An examination of the larger attorneys' firms and the larger accountants', particularly in Johannesburg, will show that accountants have a very much greater base: they employ more people, their turnover is much greater, and they are much more powerful financially than attorneys are. No firm of attorneys and no attorney would wish to be "swallowed" and become a mere adjunct to an accounting practice where most of the partners were in fact accountants, and where his needs as a legal practitioner were subordinated to those of the accounting profession". Mr Coombe [Interview:September, 1986] responding to this point, does not feel that this is relevant to practices in Cape Town. Further, we believe that the formation of a third entity along the lines of Intertax [Chapter 2] would go a long way to solving this problem in that there is not a merger of the law and accounting firms per se, and thus there is no danger of anyone being "swallowed up".

Mr O'Grady [Correspondence Interview:November, 1986] states the following: "The way in which practice has developed is, in fact,

satisfactory as far as the public are concerned. The result may militate against the smaller or less competitive attorney or accountant, but both the major firms of accountants and the major firms of attorneys have constantly to compete for their business not only with each other but with institutions such as merchant banks, investment advisers, etc. The public benefit by the range of services available". We respectfully disagree. The services of the competing institutions are subject to no professional regulation and are therefore potentially prejudicial to the public interest [see Chapters 3 and 7]. Further to this we believe that a combined service offering numerate and interpretive skills [see Chapter 4 - Synergy] subject to the high standards demanded by the professions would greatly benefit the public interest.

Mr Strachan [Interview: November, 1986] raises the potential problem facing firms as to choosing what business they are in. Are they accountants or lawyers, or multidisciplinary? This question, we submit, can be answered by looking at the type of work done by the firm. If it is a firm, accounting or legal, specialising in tax work, or judicial management etc [see Areas of Synergy, Chapter 4], then it should surely be going the multidisciplinary route due to the advantages to be gained [Chapter 5]. Mr Strachan does highlight a possible problem area with regard to investment in clients. He states that because accountants and their immediate family are prevented from investing in clients of the accounting firms, an attorney or firm of attorneys, with extensive investments in various companies might view integration with subsequent curtailment of that investment as being a negative factor. Far better to keep the

investments than to integrate. This is a possibility, but, we submit, would not be an overly significant factor. The accounting firms after all, appear to have no difficulty in attracting personnel notwithstanding this restriction. When weighed up against the threats and problems facing the legal profession, we respectfully submit that this drawback is of minor importance. Mr Strachan is further of the opinion that definite culture differences do exist, and he does foresee this as presenting potential problems. Mr Coombe [Interview:September, 1986] supports Mr Strachan on this point, highlighting the internationalism of accountants as an indication of this difference. This has been more fully dealt with, and, we submit, answered, in Chapter 2. The problems with objectivity as outlined above, are also foreseen by Mr Strachan and Mr Coombe.

Mr Coombe is of the opinion that integration could be a problem in that in law firms hierarchy is unimportant, whereas in accounting firms there is a strict hierarchy. Law firms have less staff per partner than accounting firms and this could present a problem, he states. This, we concede, could present problems, but, along with fee sharing and organisational structure would surely not be too difficult for practitioners to sort out.

Mr Wilson, reiterating many of the problem areas outlined above, also foresees a problem if a multidisciplinary practice takes the form of a partnership. He poses the question: "How do you check on the quality of work done by a practitioner in a different discipline?" This supports our contention that the two professions are not competent to act as monitors of each others' services in the client's

interests. [See Chapter 3 "Ethical Constraints" and the problem of "Objectivity" discussed above]. With respect, as we posited in Chapter 3, we feel that if a multidisciplinary practice is linked to the professional bodies, professional standards will be monitored. This of course then poses the question: To which set of rules would a multidisciplinary practice be linked? Mr Clegg [Interview:June, 1986] suggests that a "least restrictive rule" should be applied ie the rule which least restricts the ability of the practice to fulfill its functions as a professional service to clients. We are of the opinion that if a multidisciplinary practice is accepted in principle, there is no reason why the two professions should not draw up a set of guidelines for such a practice. Mr Wilson further suggests that the ethical requirements of the professions are totally different, as is the culture. As we argued in Chapter 3, the ethical requirements are substantially the same, and thus, with respect, we do not accept this as being a problem area. Mr Prismin agrees with us on this point. [Interview:October, 1986].

Mr O'Grady [Correspondence Interview:November, 1986] states: "All the major firms of accountants tend to be multi-national: they are linked to sister firms throughout the world. Some of the smaller ones are linked to sister firms throughout South Africa. The result is that the worldwide audit of a particular multi-national will be done by the same firm of accountants throughout the world or throughout South Africa [and again whether or not the firm concerned is doing work for a competitor]. If an attorney's firm were linked to an accountant's firm under these circumstances it would mean:

1. that the South African subsidiary of a multi-national would have to use the particular firm and would have no choice in the attorney that he uses; and
2. that the attorney would immediately have to give up work for any competitor. The result would be a considerable loss of work to attorneys and probably a lack of proper service to the client".

This we recognise as a major potential problem of two large practices merging depending on their client base. However, if the two practices concerned formed a third multidisciplinary entity, eg Intertax [see Chapter 2] and this problem arose, the client would merely have recourse to the existing practice or practices eg Webber Wentzel or Deloittes [see Chapter 2 in the discussion on Intertax].

The other practitioners interviewed stated essentially the same points as above. It can thus be seen that cultural problems and ethical problems are perceived to be the biggest threat. As far as culture is concerned, we respectfully agree with Mr Prismin that there is in fact no difference in culture between the two professions. The accountants might be more international in their outlook, and perhaps more dynamic in the business sense, but the standards of education and the levels of training of the two professions are similar. The problems thus can be seen to be essentially with the people. As Mr Clegg [Interview:June, 1986] and Professor Kritzinger [Interview: November, 1986] state, professional jealousy and snobbery is very prevalent, particularly amongst the legal profession. Thus, we feel, the biggest problem facing a Multidisciplinary Practice is the attitude of the practitioners. As we discussed above, people are loathe to change their old ways. However, in the light of the

threats facing the professions, and the overall benefits to be gained from merging, is it not high time that practitioners made the effort to leave their past behind?

We sincerely believe that times have changed to such an extent, the two professions cannot continue as before. The problems as outlined above, we respectfully submit, are far outweighed by the benefit to be gained from integration. It is time the professions realised this, before it is too late.

6.6 THE PERCEIVED DISADVANTAGES TO THE CLIENTELE OF THE PROFESSIONS OF A MULTIDISCIPLINARY PRACTICE.

The disadvantages to the clients can be narrowed down to two essential areas: conflict of interest, and potential prejudice. Conflict of interest has been discussed in Chapter 3, under ethical constraints. We are of the opinion that conflicts of interest arise in the normal course of work of accountants and lawyers in any event, and although a large merged practice increases the possibility of conflict of interest, there are governing bodies to ensure the high ethical and professional standards of the practitioners involved. Conflict of interests can also arise in the following instance [Correspondence Interview Mr O'Grady, November, 1986]. Accountants, not having the same ethical constraints as attorneys, can carry out the audits for major concerns which are in competition with each other in the market-place. Attorneys cannot do this. No attorney, for example, can act for more than one petrol/oil company because of the intense competition between the companies for suitable "sites". An attorney could not act for more than one head office of a bank or an insurance company, or many other types of businesses which are in competition with each other. If an attorney were to merge or form an association with an accountant, the accountant would find he might have to give up lucrative audit practices of other firms. This problem depends to a large extent on the client base of the firms involved. In these particular instances the multidisciplinary firm would be bound to inform the client that it could only provide accounting and not legal services. Practitioners considering this problem, we submit, should consider it in terms of their client base, the synergistic benefits of

a multidisciplinary practice [Chapter 4] and the advantages of a multidisciplinary practice [Chapter 5]. They will then be able to decide whether the advantages to be gained outweigh the disadvantages.

Potential prejudice in the form of objectivity has been alluded to above: some firms might want to have a second opinion offered. However, as long as the practice states up front who and what they are, and offers the client the freedom of choice, we respectfully submit that no potential prejudice lies. Potential prejudice as a problem is covered in more detail in Chapter 3. Further we submit that the risk of restricting the client's choice of professional adviser is far outweighed by the cross-fertilisation of ideas, better advice and greater access to different groups obtained by the client in an integrated practice.

A further possible problem of confidentiality must also be referred to. In Chapter 2 we mentioned that the ethics of the legal profession demand a code of confidentiality between attorney and client stricter even than between confessor and priest. Thus in an integrated practice the problem of confidentiality might arise. However, as Mr Strachan [Interview: November, 1986] states, accountants also demand a strict level of confidentiality, eg in tax matters. In his opinion this is as strict as the confidentiality between attorneys and clients. He thus sees this as being no problem, and here he is supported by spokesmen from Deloittes and Webber Wentzel [Chapter 2]. Thus, we submit, this is another problem area that can be overcome. Problems with the scope of professional privilege have been discussed in Chapter 3.

6.7 CONCLUSION.

In this chapter we have discussed the theoretical problems pertaining to integration of organisations, and have shown how they pertain to multidisciplinary practices. We have further highlighted the problems to both practitioners and their clients, as perceived by the practitioners interviewed for this report. We have further attempted, as far as possible, to show which problems we feel are real and which can be ignored, and where relevant, we have attempted to offer solutions to these problems.

Some of the problems are very real. We do not pretend to have perfect solutions to these problems. However, we are of the opinion that these problems should not be viewed in isolation. When they are viewed together with the synergy outlined in Chapter 4 and the advantages outlined in Chapter 5, and the general threats facing the two professions, we respectfully submit that the advantages far outweigh the disadvantages. Finally we would like to reiterate the comments of spokesmen of Deloittes and Webber Wentzel. When questioned on the perceived problems of Intertax [Chapter 2] they stated that they could foresee no problems. Potential prejudice and conflict of interest situations they felt, were of minor significance and would present them with no difficulties. Most importantly, to date they have experienced no problems whatsoever. We thus pose the question to practitioners: "Are these problems real, or not merely an excuse to resist change?"

REFERENCES AND BACKGROUND READING TO CHAPTER 6.

Aaker, D.A. 1984. Developing Business Strategies. McGraw Hill.

Alberts, W and Segal, J.E. 1966. The Corporate Merger. University of Chicago Press.

Bobbitt, H.R.; Breinholt, R.H.; Doktor, R.H.; McNaul, J.P. 1974. Organisational Behaviour Understanding and Prediction. Prentice Hall.

Drayton, C.I.[Jr]; Everson, C. and Griswold, J.D. 1963. Mergers and Acquisitions : Planning and Action - A Research Study and Report prepared for the Financial Executive Research Foundation. U.S.A.

Faulke, R.A. 1956. Diversification in Business Activity. Dun & Bradstreet.

Hampton, D.R.; Summer, C.E. and Webber, R.A. 1982. Organisational Behaviour and the Practice of Management. Scott Forsman & Company.

Leontiades, M. 1980. Strategies for Diversification and Change. Little Brown & Company.

Levoy, R.P. 1970. The Successful Professional Practice. Prentice Hall.

Mace, M.L. and Montgomery, G.G. 1962. Management Problems of Corporate Requisitions. GSB Harvard University, Boston.

Machiavelli, Niccolo. 1961. The Prince translated by George Bull. Penguin.

Miller, S.S. 1963. The Management Problems of Diversification. John Wiley & Sons.

Short, R.A. 1967. Business Mergers : How and When to transact them. Prentice Hall.

Wilson, A. 1984. Practice Development for Professional Firms. McGraw Hill.

Financial Management Series Number 113. 1957. Integration Policies and Problems in Mergers and Acquisitions. American Management Association.

PERSONAL INTERVIEWS.

Mr D. Clegg	Tax Director, Arthur Young, Cape Town.
Mr A. Coombe	Partner, Price Waterhouse, Cape Town.
Mr S. de Beer	Partner, Adams & Adams, Pretoria. Councillor, Transvaal Law Society
Mr S. Hussey	Manager, Technical Services, Ernst & Whinney, Johannesburg.
Prof. L. Kritzinger	Head of the Accounts Department and Deputy Dean of the Faculty of Commerce, University of Cape Town. Alternate Member of the Public Accountants and Auditors Board. Member of the Commission of Enquiry into Developments in the Accountancy Profession in South Africa.
Mr E. Liefeldt	Partner, Silberbauers, Cape Town.
Mr S. Ochse	Partner, Hoek & Wiehahn, Johannesburg. Past President: Transvaal Society of Chartered Accountants Member Standing Committee on Attorney/ Accountant Liaison

Mr C. Prismin	Partner, Prismin & Wilson, Cape Town.
Mr A. Routledge	Managing Director - Ernst & Whinney Management Services Ltd., Johannesburg.
Mr P. Strachan	Partner, Ernst & Whinney, Cape Town President of the Cape Society of Chartered Accountants.
Mr S. Symington	Partner, Arthur Young, Cape Town President of S.A. Institute of Chartered Accountants.
Mr G. Urquhart	Tax Consultant, Bowman, Gilfillan, Hayman, Godfrey Inc., Johannesburg. Former Partner, Coopers & Lybrand, Johannesburg.
Mr K. Wilson	Senior Partner, Nell & Jacobson, Cape Town Chairman of the Standing Committee on Legal Education Chairman of the Standing Committee for Ethics Chairman of the Standing Committees on Deceased Estates and Attorney/Accountant Liaison.

CORRESPONDENCE INTERVIEW.

Mr S. de C. O'Grady — Partner, Bowman, Gilfillan, Hayman, Godfrey Inc., Johannesburg.

CHAPTER 7

MARKETING

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MARKETING

7.1 OBJECTIVES OF THE CHAPTER.

[a] To identify the current state of marketing for each profession.

[b] To determine the constraints which exist to marketing for each profession.

[c] To evaluate whether the constraints are still valid.

[d] To determine whether a Multidisciplinary Practice would, by its nature, demand a distinct marketing philosophy.

7.2. INTRODUCTION.

> "Many of the means by which information might be conveyed to the public are proscribed or seriously limited for use by the professional practitioner. It is arguable that in many or most professions a substantial relaxation of some of these restrictions would bring benefits to the professions and the public which would far outweigh the dangers that might be thought to be involved to the integrity of the professions and the general quality of their services. Ignorance and lack of information on the part of the public can create distrust between the professions and the public; and this, it can be argued, is as great a danger to the professions' ability to fulfill their duty to society as any of the dangers feared by the professions".

Extract from the British Monopolies Commission Report on Professional Services [London, 1970].

The subject of marketing, above all others, represents the intrusion of the contempory societal values into the inner sanctum of professionals and professional ethics. A profession, by its very nature of serving the public interest, has historically been founded on the belief that it must remove itself from crass commercial considerations. The idea that it must employ commercial methods and enter the business arena to best achieve its purpose is anathema to many pro-

fessionals. Marketing is viewed as commercialism and self-interest at its worst where many professionals believe themselves above and divorced from the haggling of the marketplace.

It is only comparatively recently that the professions have had to face and consider the question of marketing. The reason lies partly in the nature of the relationship between the professions and the public. Throughout history the professions comprised fairly small groups of individuals who served a fairly small clientele. The preservation of high ethical standards and the ability to respond to clients' needs did not require elaborate machinery [Wilson, 1984 :1]. The rise of commercialism and an increasingly regulated society has meant that the professions serve a far larger public with ever changing needs.

> "Today the professions no longer serve a privileged minority. They meet the needs of, and depend upon, corporations, institutions and the public at large. Their clients are entitled to call upon them to discharge their duties, and these include assuring the client of the widest possible choice of professional advisers and the ways in which their services are rendered. These services must be offered in a way and upon a scale that enables them to reach the much larger corporate and individual public which are now likely to need them."

Extract from a speech by Sir Geoffrey Howe to the Nottingham Law Society [May 1975].

It is against this background of a changing society and changing professional responsibilities that the professions are forced to consider the merits, or otherwise, of marketing.

7.3 THE CURRENT STATE OF MARKETING FOR THE PROFESSIONS.

At this point, it is briefly necessary to state what is meant by marketing for the purposes of this Chapter. The definitions of marketing are as numerous as the authors that feel bound to write about it. It seems essentially however to have two elements: firstly, the decisions regarding what product [in this case what service] to produce in consideration of the market for such products and secondly, the communication to the public of attributes of the product in order that the public should be informed thereof in deciding whether or not to purchase the product. The element of persuasion to purchase which is often associated with marketing will be later discussed with regard to advertising.

This Chapter will focus on the second element of the definition viz communication. The types of services to be provided by a Multidisciplinary Practice has been covered in the discussion on synergy between the two professions [Chapter 4]. A brief discussion of the development of the scopes of service by the legal and accounting professions is relevant here because it highlights an important distinction in nature between the two professions and helps explain why the accountants are probably closer to being able to market than the lawyers.

The rapid growth of the Accounting Profession [traced in Chapter 2] can in large part be attributed to the growth of non-audit services. The Big Eight accounting firms' fastest growing practice area is general consulting, otherwise known as Management Advisory Services [Stevens, 1981:108]. The accountants have adopted a pro-active role

in expanding their services into new areas to meet the demands of the market. In respect of the first element of the marketing definition, accountants have been aggressively marketing for years. Law on the other hand assumes a reactive role. As the society becomes more regulated through the passing of legislation the scope of the legal interpretive function expands. Lawyers therefore have not been active [it is in conflict with ethics to do so] in increasing the scope of their services. This distinction places accountants closer in their relationship to market forces, and its necessary extension marketing, than lawyers.

Turning now to the communication aspect, it will be seen [in the discussion of constraints] that the professions are severely limited with regard to advertising and publicity. South Africa stands as one of the last bastions of this professional rigidity. In the United States and to a lesser extent in Britain, the barriers to advertising both by the professions themselves and individual practitioners have been removed. It is interesting to note that in America, the land of commercial consumerism, the advertising barriers for the legal profession were removed by outside forces against the wish of the governing bodies. John Bates, an attorney practising in Phoenix, Arizona, challenged the ruling of the State Supreme Court that an advertisement for his legal practice violated the disciplinary code of the State Bar of Arizona. On appeal to the Supreme Court of the United States it was ruled that restrictions on advertising by lawyers violated the free speech guarantee of the First Amendment of the Constitution. This ruling led to the liberalization of codes on advertising for all professions. [Wilson : 1984, 7]. This certainly could not happen

in South Africa where in many instances free speech constitutes a criminal offence.

This is not to say that the professions in South Africa have not had to consider the question of marketing. Traditionally, the professions had a monopoly over the services which they offered worldwide. This monopoly is coming under increasing critical surveillance as is evidenced by the introductory quotation to this Chapter. A Monopolies Commission in South Africa is currently conducting investigations. However, we gather from practitioners interviewed that the main thrust is into the regulation of fees.

Secondly and perhaps more important is the threat of competition. Mr Wilson [Interview : October, 1986] believes that advertising has grown up in other countries because of this threat. It has been forced on the professions against their will. Clients of the traditional professions are being increasingly, and energetically, canvassed by non-qualified competition, by other professions who are subject to no professional constraints and by products which substitute for services. Massive and powerful commercial organisations are intent on moving into the professional areas of practice. These organisations have the skills and resources to achieve success on a scale that must threaten many practices. Banks and others are already pointed in this direction and through political pressure are seeking to exploit areas which are currently barred to them.

It is this climate that has prompted the professions to address the question. An Ethics Committee was established by the Institute of

Chartered Accountants in 1982 to review the Rules of Conduct for the profession in the light of changing circumstances. In February 1985 the committee issued a discussion paper on advertising and publicity calling for the views of members on the subject. A vote has recently been taken across the profession on advertising. The majority voted against changing the rules. The possible reasons for this vote are discussed in the section dealing with the validity of the rules. The question of publicity and advertising has been discussed by the Law Societies. However no changes in the status quo have emerged.

7.4 THE CONSTRAINTS.

The Rules of Conduct for the accountancy and attorneys' profession fall within the regulatory and disciplinary structures described in Chapter 3: the Legal and Ethical Constraints to association. Therefore only the specific rules and their substance are described and not the regulatory machinery.

7.4.1 Attorneys

The Rules of Conduct for the four Provincial Law Societies differ slightly in the phraseology used to enunciate the rules. However in substance they are almost identical. The adjectives of "unprofessional or dishonourable or unworthy" conduct [Cape : Rule 14] shows the severity of the view taken of misconduct. The Rules of the Orange Free State Law Society are clear for our purpose:

[1] An attorney may not tout for work. This includes advertising in any manner the object or effect of which is to induce or invite the public to entrust to him work or business in his professional capacity [Rule : 17.1[b]]. This has minor exclusions to allow nameplates etc on office premises. Such nameplates may not exceed 15 centimetres in height.

[2] A general rule prohibiting advertising is contained in Rule 17.7 except by means of a professional notice in a periodical devoted solely to legal matters.

[3] An attorney may not even allow his name to be inserted in a telephone directory in bold type [Rule 17.8].

[4] Rule 17.10 prohibits an attorney from inserting on his letterheads or business cards the appointment he holds or the names of any of his clients.

[5] An attorney may not without prior approval of the Law Society Council in his professional capacity appear on television or broadcasting on radio or television. He may further not lecture to lay audiences on any legal subject [Rule 17.11].

[6] An attorney may not allow his name together with his qualifications to appear on letterheads or any documents in conjunction with a non-practitioner [Rule 17.18].

[7] An attorney may not insert his qualifications on the letterhead of a practice of which he is a partner, other partners not being practitioners [Rule 17.20]

The rules further prevent such things as the excessive use of signboards on which a practitioner's qualifications are displayed [Rule 17.23].

From the above it is evident that a practitioner is completely precluded from advertising or publicising his services to the general public. If the conduct does not contravene a specific rule it may still fall within the ambit of touting, that is, the solicitation of

work.

7.4.2 Accountants

The Disciplinary Rules as published in Government Gazette No 4980, dated 6 February, 1976 [as amended] sets out the actions which constitute improper conduct. Section 2[1][c] prohibits an accountant from soliciting by personal canvass, advertising, correspondence, circulars, offering or paying a reward or by any other means, professional work or any other work normally performed by a registered accountant or auditor. Certain minor exclusions are mentioned.

Section 2[1][o] prohibits conduct in a manner which is discreditable or which tends to bring the profession of accounting into disrepute.

Rule 10 of the Rules of Professional Conduct provides a guideline to these sections, insofar as soliciting, advertising and publicity are concerned. To solicit is to approach a prospective client and offer professional services. To advertise is to communicate, to the public, information as to the services provided by a specific accountant or accountancy practice. For a registered accountant and auditor to solicit is considered to be discreditable. However, certain types of advertising being advertising not designed to procure professional business may not be objectionable.

These rules preclude a practitioner from engaging in any form of positive publicity. The rules are not couched in as strong terms as for attorneys and do not go to the lengths of regulating insertions in

telephone directories. The extensive nature of these rules is evident when Rule 5 is considered.

Rule 5 prohibits an accountant or auditor from using a company to obtain for himself work normally done by an accountant or auditor. This rule, it is submitted, prevents Intertax [referred to in Chapters 2 and 3] from advertising because work would naturally be referred back to Webber Wentzel or Deloitte, Haskins & Sells if the client required services which the non-practitioners could not provide.

Rule 6 is important with regard to comparative advertising [discussed later in this Chapter]. A registered accountant and auditor shall not criticise to any member of the public the professional work of, professional attachment of, or the professional fees charged by, any other registered accountant or auditor.

The above rules constitute the constraints to publicity for each profession. It can be seen that as in the case of the constraints mentioned in Chapter 3 the ethics of the professions are very similar.

7.5 THE END OF AN ERA : WHETHER THE CONSTRAINTS ARE STILL VALID?

> "I believe our profession has placed itself at a grave disadvantage in tough economic times regarding what our slice of the cake could and should be. All I want to do is business in a changed business environment because it's not 1951 when the laws were made, it's 1986 and 30 years have gone by and we have the same rules - it doesn't make sense".

Phillip Strachan, President of the Cape Society of Chartered Accountants commenting on the recent vote against advertising and the state of the legislation [Interview: November, 1986].

The above sentiments reflect the view that the constraints are outmoded, they either do not serve the purpose for which they were enacted or this purpose itself has been eclipsed by changed circumstances. Each of these alternatives will now be discussed in detail.

The purpose of the constraints is to protect the fundamental ethics of each profession, the status and dignity of the profession and the best interests of the client. The climate of entrenched status and dignity of purpose has certainly changed. In 1951 in a speech to preamble the passing of the Public Accountants and Auditors Act the then Minister of Finance, the late Hon. N.C. Havenga stated:

> "What does the future hold for the accountancy profession in Southern Africa? Does it hold only the enjoyment and exploitation of the privileges which will accrue from the newly

established closed shop for the profession? The privileges of the newly established monopoly? During the past Session of Parliament misgivings of this nature were voiced. But, I am glad to say, from my personal knowledge of the profession its future holds a greater promise than that. I am convinced that the profession will fully justify Parliament's faith in it".

Thirty-five years later the government has seen fit, following a trend in America and Britain, to appoint a Monopolies Commission to investigate the professions.

Secondly the attitudes of clients to the professions is changing worldwide with the emergence of consumer action groups and greater education. The humility which typified many clients - private and commercial in the face of the apparently overwhelming expertise of the professional is vanishing fast. The respect once accorded as a right to the professions has been eroded by changing social attitudes [Wilson, 1984:9]. If it has been in the legal profession's best interest to remain silent about the work it performs, why is it that the average man in the street regards a lawyer as a "shyster"?

We turn now to the second main purpose of the constraints: the protection of the interests of the client. The main argument advanced against the marketing of professional services is that it is thought that this will lead to unrestrained competition, and such competition will lead to price-cutting which will in turn lead to a compromising of the standards of integrity and service. Closely allied to this is the dislike of commercialism historically by the professions and

marketing is seen as commercialism at its most brash. One could argue that if the reasons are so overwhelmingly convincing to practitioners there should be no reason to enforce them by rules of conduct [Wilson, 1984:5]. Obviously they are not so.

With regard to the subject of commercialism we feel that Lewis states the position succinctly and is worth quoting at length. To head Chapter 13 of his book on legal ethics he puts forward the following two quotes:

> "The older order changeth, yielding place to new,
> And God fulfills himself in many ways,
> Lest one good custom should corrupt the world"
>
> Tennyson, "Morte D'Arthur" [1842]

and,

> "The labourer is worthy of his hire"
>
> Luke 10.7

In commentary the author says that "whatever its merits, the ancient principle which the history of the profession reveals, that the lawyer gave his services free for the love of the art and out of duty to the state and his fellow man, has long since vanished from the legal precepts under which the attorneys' profession operates and the older order has long since been supplanted by the application of a still

more ancient principle expressed in the second of the quotations. Yet even in the modern world the legal profession retains many inhibitions about the garnering of the fruits of competition" [Lewis, 1982 : 225]. We feel that the legal profession can no longer ignore the influence of commercial considerations in a country where justice is no longer affordable by a majority of the population [as documented in Chapter 2].

The second main argument founded on the clients' interest is the principle that the public is unable to evaluate the nature and quality of professional services and therefore will be misled by exaggerated advertising claims by practitioners. The corollary to this is that the client is able under the present system to enquire and receive advice by word of mouth [Interview: Wilson, November 1986, Interview: Prismin, November 1986]. With respect, it is submitted that this is a circuitous argument. If the client is unable to assess the quality of service through advertisement, how is he better able to assess the quality of service through word of mouth. We feel this argument may be described by the legal phrase "reductio ad absurdum".

This brings us onto the sinister quality regarded by many as a principle of advertising. We have termed this the "Hidden Persuader" principle. Many professionals see advertising as manipulative in influencing the general public. This implies that advertising uses covert means to influence consumers to buy products they neither want nor need. Consumer advocates argue that the functional role of advertising should be only to inform and not to persuade. The

difference of opinion lies in the traditional buyer/seller relationship. Sellers see advertising as an advocacy role; a conscious attempt to influence the buyers' decision-making process. For consumers who do not concede that the seller has a legitimate interest in influencing the buyer to choose his product, almost all advertising will be perceived as manipulative [Feldman, 1976:116]. An explanation of manipulation is provided by A. Achenbaum, the director of marketing services for a large American advertising agency [as quoted in Feldman: 116]:

> "To manipulate ... means to manage or control artfully or by shrewd use of influence, successfully, especially in an unfair and fraudulent way ... while it doesn't say so explicitly, there is an inference of involuntary choice, of hidden hands moving the person like a marionette. On the other hand, the usual words used in describing what advertising does are not perjorative ... No responsible person in advertising will argue for involuntary choice or compulsion. This would be contrary both to the free market and free society".

By extension, the perceived illegitimacy of the persuasive role of advertising is that consumers are influenced to buy products they do not need. If this is correct then those who argue that restrictions on advertising protect the consumer are correct. But is this so?

Consumers do not make use of professional services unless they will be of some benefit; the very nature of professional service dictates this. The argument that advertisements for cheap divorces will

increase the divorce rate is nonsense. The cause of marital disharmony is not created by advertising. Even if it were so the function of the professions is not to protect the consumer from himself.

Secondly, the consumer is presently being wooed by competition that does not have an exploitative conscience and is not subject to regulations governing the quality of work provided. Is it not better that the professions in fact employ persuasion to influence the client to purchase a higher standard of work than that offered by the competition. Surely this is in the client's best interest? Mr Symington [Interview:November,1986] believes that it is extremely negative that the public might be misled by, for instance, radio advertisements to the effect that for the best tax, accounting and financial advice, a banker should be consulted.

> "I think the public would be misled if they believed that sort of advertisement and it's a great pity that the professions are not allowed to draw attention to the fact that they have the skills and advice capabilities".

The legal and accountancy governing bodies are presently advertising to improve the image of the profession as a whole. It is extremely shortsighted if they hope to influence the consumer merely by being informative when the competitors are using every means at their disposal to be persuasive.

To continue this argument further we turn to a comment by Mr Prismin

[Interview:November, 1986] that he feels uncomfortable with the type of advertising that has grown up in America and which would say, for instance, "consult Prismin for easy divorces". Theodore Leavitt in an article discussing the marketing of intangibles, of which professional services are a category, highlights two important elements. The consumer is unable to test or evaluate the quality of service before he purchases it. There is therefore a high degree of uncertainty. Thus, when prospective customers can't properly try the promised product in advance, metaphorical assurances become a necessity of the marketing effort. Promises, being intangible, have to be "tangibilized" in their presentation [Leavitt, 1981:97].

Leavitt continues that this accounts for the solid, sombre Edwardian decor of many law offices, the prudentially elegant and orderly public offices of investment banking houses and the confidently articulate financial consultants in dark suits. The point of this is that in legal and financial areas the client is looking for assurance. Therefore we feel that practitioners' fears that cheap advertising will mislead the public are largely unfounded. The public is most likely to be convinced by the type of advertising that uses the image of professionalism and high quality work, which would in fact enhance the image of the profession. This is surely why we do not see representatives of, eg, the Trust Bank in loud suits extolling the virtues of cheap merger advice. It would simply be ineffective.

To summarise at this point, we have dealt with the first element of whether the constraints are outmoded, that is they no longer serve the purpose for which they were enacted. We turn now to the second

element: whether this purpose has in fact been eclipsed by changed circumstances for the professions? Wilson [1984:5] identifies five forces which will compel the professions to embrace marketing if they wish to remain intact:

[1] Survival: The professions worldwide are subject to a recession. There are fewer commercial concerns and a reduced number of successful startups. The private sector is characterised by rising unemployment and early retirement. It is interesting to note that in America and Japan, the populations are ageing. In South Africa the effects of a worsening economy and a shrinking market do not have to be spelt out as is evidenced by the concern of Mr Strachan's comment earlier.

[2] Competition: This threat has been covered in Chapter 2 and the earlier parts of this chapter. We feel this is the major force requiring the professions to market.

[3] Inflation: Increased revenue that does not outpace inflation means decreased real revenue and ultimate demise. Costs, especially in the legal profession, are already extortionate; therefore the professions should increase revenue by cutting out competition.

[4] Technology: Modern society is capable of producing substitutes for professional services, for instance, accounting computer software. This can only be countered by representing the benefit of professional advice.

[5] Changing Client Attitudes: This has already been discussed in the introduction to this Chapter. Clients are no longer accepting passively the status and dignity of professions that make no active assertion of their positions as the pillars of society.

We agree wholeheartedly that these factors are relevant with particular reference to the threat of competition. We agree with the sentiments expressed in the extract of the British Monopolies Commission quoted earlier that the perceived ills of marketing, and there certainly may be some, are far outweighed by the advantages to the profession and the individual practitioner. We believe that the individual practitioner should be able to advertise, certainly with regard to the policy of the governing bodies that are seeking to influence the public merely by informing and not persuading, and seem to exhibit a singular lack of knowledge considering the techniques they are attempting to employ.

John Deighton, Professor of Business Administration at the University of Chicago states succinctly:

> "Should the professions market? Can they afford not to? When professions evade the challenge of marketing, they serve neither themselves nor their markets. In the unfettered pursuit of the consumer's interest lies the only sustainable assurance of professional relevance and social responsibility". [Deighton, 1986:3].

7.6 THE STATE OF MARKETING ; THE INSIDE STORY.

> "I feel that the whole nature of the profession is alien to advertising".

Mr Wilson commenting on the legal profession [Interview:October 1986].

In Chapter 3 we identified attitude of mind as a major constraint to association. Marketing is undoubtedly the area where this constraint is most powerfully active. Mr Symington [Interview:November, 1986] commenting on the recent "no" vote on advertising in the accounting profession highlights the behaviour pattern of many practitioners:

> "Many of them would have voted against it even in the large firms because they find it an uncomfortable prospect that a chartered accountant is going to be able to say in flashy language, or what he believes will be flashy language or overstatement, that he is the greatest - it's traditionally an uncomfortable experience for that to take place. Traditionally there has been a feeling that your skills should be demonstrated rather than talked about".

Mr Symington makes a further very valid point regarding damages for professional negligence. In America and Australia, to a lesser extent but also increasingly in Britain, firms of accountants are facing tremendous claims for alleged negligence in that disgruntled clients and even non-clients are alleging they have suffered damages as a result of negligent reporting by accountants or auditors. In

this climate any trend towards exaggerated statements of what the client can expect makes practitioners uncomfortable.

Professor Kritzinger [Interview: November, 1986] interprets the accountants' vote as a function of big versus small practices. He believes that the bigger practices are for advertising because they offer a range of services apart from audit which they need to sell and they have the resources to do it. The smaller practices fear that if management advisory services are sold then the audits will also be sold. He believes that a major constraint in changing attitudes is thus the diversity of the sizes of practice and their respective resources in the profession.

We believe that the same feeling would be present amongst practitioners in the legal profession. Further to this, the legal profession has an ethic against unfair advantage [Chapter 3]. However, large legal practices by virtue of their greater intellectual and financial resources and performing work which is more newsworthy, have an unfair advantage over their smaller competitors.

On the other end of the spectrum are the views of Mr De Beer [Interview July, 1986], Mr Coombe [Interview September, 1986], Mr Symington [Interview November, 1986] and Professor Kritzinger [Interview November, 1986] who support positive advertising. Mr De Beer describes himself as a "maverick" in the legal profession in this regard. Mr Coombe in particular supports advertising on radio, television, newspapers and billboards.

One thing is certain. Until a majority of the members of the governing bodies are convinced that advertising holds benefits for the client and the professions, nothing will change. Mr Clegg is of the opinion [Interview: June, 1986] that the accounting profession is closer to amending the constraints than the legal profession. We submit that in consideration of the factors discussed in this chapter the constraints are outmoded and that the professions should stop trying to preserve the past and apply their minds to the task ahead.

7.7 MARKETING AND MULTIDISCIPLINARY PRACTICE.

Multidisciplinary Practice by its nature of combining the skills of an accountant with the skills of an attorney would provide an essentially new service to the client. The client unaware of the benefits of this professional one-stop quality service would need to be positively informed. Marketing and its necessary corollary advertising is therefore essential to the success of Multidisciplinary Practice as a form of practice.

> "The whole question of publicity and advertising is the current problem for Multidisciplinary Practice. The reason people are thinking about it is to meet competition from other sectors of the financial services market that are not subject to these constraints. At the moment a joint multidisciplinary service is still under these constraints" [Symington: Interview , November, 1986].

As mentioned earlier this is the position with Intertax. A senior spokesman for Deloitte, Haskins & Sells mentioned that he found the constraints "suffocating" in this regard.

The professions will have to change their entire policies on advertising for this benefit to extend to Multidisciplinary Practice. No greater privileges should attach to a joint firm than an ordinary practitioner. To enjoy the benefits of professional status a multidisciplinary practice would still have to be bound by the ethical rules of the professions.

7.8 CONCLUSION.

In this chapter we have investigated the arguments against advertising traditionally mooted by the professions. We have found them largely without substance. Even conceding that certain merits in the arguments against advertising do exist, we believe these are far outweighed by the advantages both to the professions and client. We further submit that the climate of change and threat has rendered this debate largely irrelevant if the professions wish to survive. The professions must marshall their forces, and if their singular lack of knowledge concerning the science of marketing is anything to go by, a little help is needed. The pillars of society should not allow their foundations to be chipped away without a struggle. A grave mistake would be for the professions to view their services as indispensible.

It is interesting to note that until quite recently the pinstriped purveyors of financial trust and security, bankers, were equally as far removed from the principles of marketing. Today with the use of this tool they pose a major threat. How long can the professions allow themselves to be their own worst enemies by keeping silent?

REFERENCES AND BACKGROUND READING TO CHAPTER 7.

BOOKS.

Feldman, L.P. 1976. Consumer Protection. West Publishing Company.

Lewis, E.A.L. 1982. Legal Ethics - a guide to Professional Conduct for South African Attorneys. Juta & Company.

Rathmell, J.M. 1974. Marketing in the Service Sector. Winthrop Publishers Incorporated.

Stevens, M. 1981. The Big Eight. MacMillan Publishing Company.

Wheatley, E.W. 1983. Marketing Professional Services. Prentice Hall.

Wilson, A. 1972. The Marketing of Professional Services. McGraw Hill Book Co. [UK]Limited.

Wilson, A. 1984. Practice Development for Professional Firms. McGraw Hill Book Co. [UK]Limited.

REPORTS.

Monopolies Commission: Professional Services. A report on the general effect on the public interest of certain restrictive practises so far as they prevail in relation to the supply of professional services. [London, 1970].

SPEECHES.

Havenga, N.C. [The late honourable]. 1951 : October. Speech to open the first meeting of the Public Accountants and Auditors Board.

Howe, Sir Geoffrey. 1975 : May. Nigel Colley Memorial Lecture : Nottingham Law Society.

JOURNALS.

Deighton, Prof. J. 1986:September. Marketing the Professions. The Graduate School of Business News, University of Cape Town.

Leavitt, T. 1981. Marketing Intangibles. Harvard Business Review.

Leavitt, T. 1960. Marketing Myopia. Harvard Business Review.

PERSONAL INTERVIEWS.

Mr D. Clegg	Tax Director, Arthur Young, Cape Town.
Mr A. Coombe	Partner, Price Waterhouse, Cape Town.
Mr S. De Beer	Partner, Adams & Adams, Pretoria. Councillor of the Transvaal Law Society.
Prof L. Kritzinger	Head of the Accounts Department and Deputy Dean of the Faculty of Commerce, University of Cape Town. Alternate member of the Public Accountants and Auditors Board. Member of the Commission of Enquiry into Developments in the Accountancy Profession in South Africa.
Mr C. Prismin	Partner, Prismin and Wilson, Cape Town.
Mr. P. Strachan	Partner, Ernst & Whinney, Cape Town. President of the Cape Society of Chartered Accountants.
Mr S. Symington	Partner, Arthur Young, Cape Town. President of the S.A. Institute of Chartered Accountants.

Mr K. Wilson	Partner, Nell & Jacobson, Cape Town. Chairman of the Standing Committee on Legal Education. Chairman of the Standing Committee for Ethics. Chairman of the Standing Committee on Deceased Estates. Chairman of the Standing Committee on Attorney/Client liaison.

CHAPTER 8

CONCLUSIONS : THE CASE FOR MULTIDISCIPLINARY PRACTICE

CHAPTER 8

CONCLUSIONS : THE CASE FOR MULTIDISCIPLINARY PRACTICE

8.1 OBJECTIVES OF THE CHAPTER.

[a] To integrate the preceding Chapters to determine the validity of Multidisciplinary Practice as a form of practice for accountants and attorneys in South Africa.

[b] To describe the form or forms in which its valid existence is perceived.

[c] To recommend areas for future research.

8.2 CHANGE: INEVITABLE AND POWERFUL

> "The roaring current of change is a current so powerful today that it overturns institutions, shifts our values and shrivels our roots. Change is the process by which the future invades our lives".
>
> Alvin Toffler, Future Shock, 1970

We live in a world of change, it is as old as time. In fact more than this change is a function of time. The forces of change and for change are probably greater now than in any period of history. The professions date back to man's early civilisation: more specifically South African law to a Roman origin and accountancy to the Ancient Greeks [Chapter 2]. It is thus important to highlight the major change that has occurred in the very fabric and values of society since the days of the classical civilisations.

The Ancient Greek civilisation represents the pinnacle of philosophy with the likes of Plato, Aristotle and Socrates. The Romans developed a highly sophisticated system of Law finally codified in the Corpus Juris Civilis. This is evidenced by large sections of the current South African Law being essentially the same as in Roman times, eg the Law of Sale. It is therefore evident that philosophy, and its close adjunct, law, were of extreme value to these societies. Lawyers and philosophers occupied the highest positions in society.

Throughout history, the most significant and far reaching development has been the change in the class order of society. In the western world the rise of commercialism, more recently under the guise of capitalism, has reversed the positions of philosopher and merchant. Monetary value and commercial interest have become the lifeblood of modern culture. All the forces which constitute threats today for the professions are a result of the intrusion of monetary value as the criterion of modern society. Accountancy has adapted fairly well to this change, law by its nature of serving justice [Chapter 3] has not and is now under greater threat.

We turn now to a brief discussion of accelerated change in the twentieth century, as it pertains to this topic. It is necessary here to contrast the development of three key actors: law, accountancy and financial institutions [more particularly banks]. All three institutions at the turn of the century were traditional and limited to their particular scopes of service. Accountants, most especially in the form of the Big Eight accounting firms, were the first to respond to market opportunities by expanding their services away from audits and by growing at a tremendous rate [Chapter 2]. This initial growth was made possible by selling additional management advisory services to audit clients as the profession could not advertise.

From the beginning of the 1950's we see an explosion of business activity and an increasing business complexity fuelled by technological advances, eg computers. This environment supported an expanding need for more sophisticated management advice and techniques. Accountants

adapted well by providing further services. Taxation advice as a particularly lucrative area opened up for lawyers. However they lost this area to accountants [Chapter 2].

Until quite recently advice regarding the legality and commercial implications of business transactions or the private affairs of the public were the monopoly of law and accounting respectively. However financial institutions began to exhibit rapid growth and one of the means to achieve this was to employ qualified lawyers and accountants to provide financial services. The financial institutions have the advantage of being able to advertise their services [Chapter 7] and have begun to encroach on the domain of the professions and pose a major threat [discussed below].

8.3 THE IMPACT OF CHANGE : THREATS

The changed circumstances which we have briefly described pose five major threats for the professions worldwide [Chapter 7]:

[1] Survival

[2] Competition

[3] Inflation

[4] Technology

[5] Changing client attitudes.

The impact and magnitude of these threats is different for the legal and accounting professions in South Africa and will be discussed separately.

[a] Lawyers:

The legal profession committed ethically to serving the interests of justice has retained its historical and conservative roots and therefore has not responded to market forces. Justice has however now become a commercial consideration through the extortionate cost of litigation. The profession is now beginning to be attacked from all sides. The government by appointing a Monopolies Commission is following a worldwide trend of investi-

gating the continued validity of the professions' monopoly over certain of its services and has through legislation allowed other institutions to provide certain legal services [for instance the exclusionary provisions in Section 83 of the Attorneys' Act referred to in Chapter 3]. Attorneys today face competition for commercial work from the financial institutions and from accountants. Both of these competitors have far greater financial and technological resources. The Big Eight accounting firms have expanded by buying in skills, amongst them being legal skills. Accountants have greater access to clients through the provision of core services, such as audits, and international links.

Attorneys are prevented from competing on an equal footing with the financial institutions through the restraints on advertising [Chapter 7]. The traditional public esteem afforded to the profession is crumbling in the face of high prices for legal services.

An important threat is represented by technology. Lawyers have been slow to understand or incorporate the advances of computers etc. Their competitors rely heavily on technology to improve their administration and the speed of their services. Lawyers are historically poor administrators. Furthermore, it is very probable that in the future computer software will be designed that enables an unqualified person to perform certain of the more mundane legal tasks.

A further threat is posed by the attractive salary packages offered to qualified lawyers by the financial institutions. Many of the top law graduates may be lured away from private practice by the attractive financial prospects in merchant banking for instance. This will, over time, make the profession even less able to compete.

Any practitioner that is not convinced that the threats to the profession are considerable is referred to the dilemma faced by the English legal profession, the bastion of conservative legal practice. In support of our argument an extract from an article "The Law Divided" recently published in "The Illustrated London News" is attached as Appendix A to this Chapter.

[b] Accountants:

We have argued [Chapter 7] that the accounting profession faces essentially the same threats as the legal profession. However, the accounting profession has been pro-active in expanding the scope of services offered in response to market forces. This factor together with the considerabale resources of the large international accounting firms means that the threats are less considerable. It does not mean that they are non-existent.

Accountants in South Africa may not advertise their services [Chapter 7]. This is a severe restriction on facing up to competition. Economic recession spells a shrinking and even more competitive market. Inflation means reduced profts. The

Monopolies Commission is equally investigating the services offered by the profession. Further to this, as in the case of attorneys, many competitors offer far more attractive salary packages than a top student can expect in his years of articles.

8.4 RESPONSE TO THE THREATS

A definite trend towards a closer association between attorneys and accountants was highlighted in Chapter 2. The culmination of this can be seen in the formation of Intertax. Almost all practitioners interviewed recognised this trend although many did not foresee any formal integration. The reasons, we respectfully submit, are largely due to attitude of mind: conservatism, professional jealousy, intellectual snobbery etc, as discussed in Chapters 3 and 6. We firmly believe that Multidisciplinary Practice offers a viable response for both professions in combating external pressures [Chapter 5]. The synergistic benefits of integration are particularly apposite as the two professions contribute different skills to the application of problems in many common areas [Chapter 4].

In response to the fact that accountants seem less threatened than attorneys, it may be suggested that accounting practices should merely employ more lawyers. This, we submit, is not the case. The reason lies in the concept of distinctive competence. When the relative competing strengths of accountants vis a vis the financial institutions are considered the following aspects emerge:

[1] Both in providing financial services have the same skill base; each institution has the services of accountants and lawyers. Further to this each institution utilises technology to support the services it offers.

[2] The difference is that the financial institutions are allowed to

advertise freely and have considerable financial resources to support publicity. Accountants are severely constrained in this area.

The quick answer might be that accountants should merely be allowed to advertise. This still does not solve the problem because it then becomes a competition of equals. The answer, we submit, lies in the essence of marketing.

Professional services are intangible. Therefore the public is not able to evaluate the quality of service prior to purchase. The buying of services is therefore an area of high risk and uncertainty. Metaphorical assurances, eg professional status, become very important [Chapter 7]. Accounting practices that buy in legal skills lose the benefit of professional status that attaches to an attorney. Furthermore the lawyer is restricted in the scope of services he can provide [Chapter 3]. Accountants therefore if allowed to advertise would be precluded from being able to communicate any legal professional status.

We submit that if the professions were allowed to advertise a joint service with the metaphorical assurance of the professional status of both professions it would be more persuasive than the competition, to a public looking for assurance.

Secondly, particularly in tax matters, accountants should have recourse to legal insight in providing sound advice. Mr Symington [Interview:November, 1986] states that he feels uneasy in providing

complex tax advice which might have far reaching legal implications. He is supported in this by Mr O'Grady [Correspondence Interview: November, 1986] who feels that particularly poor tax advice has been given by many accountants who have not consulted a tax lawyer.

In consideration of the advantages of an integrated service referred to above and more fully discussed in Chapters 4 and 5, we now consider the forms in which its valid existence is perceived.

8.5 MULTIDISCIPLINARY PRACTICE : THE ALTERNATIVES.

Multidisciplinary Practice, for the purposes of this report as stated in Chapter 1, refers not only to structural integration but also to an integrated service. We therefore consider the following alternatives.

[1] Complete merger of an accounting and law practice:

The professions are presently prevented by their respective constraints from merging with each other [Chapter 3]. However, even if this were not the case, we do not see this as a particularly viable alternative. The problems of confidentiality and conflict of interest [Chapter 6], depending on the client base, could be harmful to the maintenance of existing clients. For example, the accounting practice may be forced to withdraw its services from an audit client because of the prohibition against attorneys representing competing interests. Furthermore, we feel the historical nature of conservatism in each profession would mitigate against a trend of complete merger. Thus, under present circumstances, we do not see this as a viable alternative.

[2] The formation of a third legal entity by an existing law and accounting practice under the present constraints:

This alternative is represented by Intertax [Chapter 2]. We agree with the spokesman of Webber Wentzel that this entity may mark the beginning of a trend. However, the Company in its

present form is not an effective solution to the threats mentioned earlier. Intertax is prevented from advertising [Chapters 3 and 7]. Furthermore the legal practitioners involved do not have the status or privileges attaching to the profession and are limited in the scopes of their service. The accountants similarly are not able to perform audits. Therefore we feel this alternative is only halfway to being a full solution. The scope of services offered is, we submit, superior due to the combined skills of the practitioners. However, the constraints [Chapter 3] militate against effective competition with the financial institutions. Therefore we feel that this also, is not the best solution.

[3] The formation of a third legal entity which, through amended legislation, would not be subject to constraints on association or advertising.

A company distinct from the core accounting and legal practices would obviate the possible loss of clients through problems of confidentiality and conflict of interest mentioned in the first alternative. If a problem did arise the client would merely have recourse to the services of one or other of the core practices and not the multidisciplinary practice [Chapter 6].

Amended legislation to allow practising practitioners to be employed in a multidisciplinary concern would ensure that the service provided would be regulated by professional standards and ethics and thus be in the public interest. The professional

status of the concern would constitute an advantage in marketing [as discussed above]. All the further advantages discussed in Chapter 5 would apply. In Chapters 3 and 7 we have argued that the present constraints on association and advertising are outmoded. We submit it is in the professions' interest to adapt to changing circumstances and that no compromise of professional ethics need occur. We further submit it is in the public's interest to receive a professionally regulated service, that by the application of two professional skills, is superior to that which is offered at present. An extract from the foreword to the discussion paper on advertising issued to the accounting profession [Chapter 7] is apposite.

"Integrity is an attitude of mind and there need be no change in that attitude merely because there has been a change in the ethical rules".

This, we submit, is a most desirable solution. A third entity, freed from the legal and ethical constraints on advertising, will be able to offer a better quality service ensuring a competitive advantage over the financial institutions.

[4] The formation of ad hoc project teams:

If the synergistic benefits described in Chapter 4 do not constitute sufficient advantages to warrant integration for the particular practices concerned we consider this to be a viable alternative. Thus, depending on the firm's client base and type

of work offered, the practitioners involved would associate as the need arises.

In the final analysis, we feel that points 3 and 4 above offer the best solution to the threats facing the professions. Factors such as the client base, size of practice, skills within the practice, client pressure and scope of services offered by the practice will determine which of these alternatives is most appropriate.

8.6 RECOMMENDATIONS FOR FUTURE RESEARCH

This report has highlighted the threats facing the two professions, and offered Multidisciplinary Practice as a viable solution. Future researchers might wish to explore other alternatives. Further, because Multidisciplinary Practice itself is a new concept worldwide, we feel that further research in this field and related areas should be undertaken.

[1] The need for joint professional education

[2] The continued validity of the division between the Bar and Side Bar in the legal profession in South Africa

[3] Whether Multidisciplinary Practice requires a separate code of conduct from the professions that may comprise it.

[4] An investigation into the types of marketing practice that are most suitable and effective for professional firms.

[5] The scope for computerisation in law, for example the reasons for and against using computers to aid in litigation.

[6] The scope for other professions in Multidisciplinary Practice. Professor Kritzinger [Interview: November, 1986] is of the opinion that at the higher levels professional information merges into a mass of skilled information. He further contends that multi-disciplinary practice of lawyers and accountants represents the tip of the iceberg.

[7] The need of emergent black businessmen in South Africa for a multidisciplinary service.

[8] The impact of the threats outlined above on the smaller practices in South Africa, and whether a Multidisciplinary Practice is a viable alternative for these smaller practices [eg the one-man practices in the platteland].

APPENDIX A

An extract from an article "The Law Divided" written by Marcel Berlins and Michael Zander, which appeared in The Illustrated London News, October, 1986. Michael Zander is the Professor of Law at the London School of Economics.

"The legal profession is under threat as never before in its long history. For more than five centuries lawyers have basked in public esteem and lucrative professional complacency. Today the 46,000 solicitors and 5,000 barristers who make up the profession in England and Wales are finding their ancient customs, their professional practices and even their very livelihoods under attack.

"They are assailed from all sides. The Government anxious to save public money, is trying to find ways of reducing the vast sums spent on legal aid for those who cannot afford to go to court. The stingy fees paid to barristers who take on criminal cases have already resulted in an unprecedented battle in the courts between the barristers and their paymaster, the 78-year-old Lord Chancellor, Lord Hailsham of St Marylebone. The lawyers won a partial victory, but complaints about low fees for publicly funded work, for both barristers and solicitors, continue vociferously.

"Another Government money-saving tactic under discussion would take away from solicitors some of their remunerative advisory functions under the legal-aid scheme and give them to advice bureaux instead. This, at a time when solicitors are still reeling from the

Parliamentary stab in the back which removed from them their monopoly over conveyancing, and opened the way for banks, building societies and some non-lawyers to take a substantial slice of what was their most reliable money-spinner, one already reduced by the new phenomenon of cut-throat competition for customers.

"Too many years of comfortable living did not help the legal profession repel more insidious predators. Slowly, accountants began to take over the advisory work on tax matters from lawyers. Various other specialised agencies nibbled at the traditional lawyers' role of providing wide-ranging financial advice.

"The reform of the divorce laws, and the continuing, still unfinished simplification and streamlining of trial procedures and legal processes have made further erosions into the lawyers' workloads and incomes.

"The profession is losing what it had formerly taken for granted - a high proportion of the cream of the universities' law graduates. Increasing numbers of top law students are being drawn to central or local government or to the big corporations, with all the pensions and perks that private practice lacks.

"Lawyers are moving through turbulent times. After centuries of quiet comfort they have only belatedly woken up to the multiple threats. They need to adapt quickly."

REFERENCES TO CHAPTER 8

BOOKS

Toffler, A. 1970. Future Shock. Pan Publications.

JOURNALS

The Illustrated London News, October, 1986:23.

PERSONAL INTERVIEWS

Prof. Kritzinger — Head of the Accountants Department and Deputy Dean of the Faculty of Commerce, University of Cape Town.

Alternate Member of the Public Accountants and Auditors Board.

Member of the Commission of Enquiry into Developments in the Accountancy Profession in South Africa.

CORRESPONDENCE INTERVIEW

Mr S.deC. O'Grady — Partner, Bowman, Gilfillan, Hayman, Godfrey Inc., Johannesburg.

APPENDIX 1.

SAMPLE OF QUESTIONS USED IN PRELIMINARY PERSONAL INTERVIEW.

1. What are the areas of synergy which you perceive to exist between accountants and attorneys?

2. What is the nature of the synergy? Do lawyers and accountants perform the same or complementary functions in the perceived areas of synergy?

3. To what degree does the synergy exist in each area?

4. What do you perceive as the advantages to yourself of multidisciplinary integration?

5. What do you perceive as the advantages to the profession as a whole, of multidisciplinary integration?

6. What do you perceive as the possible advantages of a multidisciplinary service to the client?

7. Do you agree/disagree with the advantages expressed by other practitioners? [A resume of prior opinion was prepared for each interview].

8. Questions 4,5,6 and 7 were asked with regard to perceived disadvantages/problems of integration.

9. What is your general perception of the need for, and therefore, valid existence of Multidisciplinary Practice?

10. In what form do you perceive its valid existence?

11. What is your personal opinion on advertising and publicity for the professions?

12. Do you perceive any trends in your profession with regard to the scope of services offered and cross-professional referrals?

APPENDIX 2

SAMPLE OF CORRESPONDENCE MEMORANDA

RESUME OF OPINION EXPRESSED DURING THE COURSE OF PRELIMINARY INTERVIEWS.

1. The areas of synergy which exist between the scopes of service of attorneys and accountants.

[a] Tax

[b] Estate planning - with particular reference to taxation implications

[c] Labour law - the ambit of the unfair labour practice with regard to a company's financial position in wage negotiation

[d] Merchant banking and corporate finance

[e] Liquidations

[f] Mergers and acquisitions

With regard to the above it is important to establish the basis for any perceived synergy and the degree to which it is perceived to exist.

2. Advantages of an integrated practice.

[a] One-stop shopping: The client is able to approach and brief a single firm in relation to problems having both legal and accounting implications

[b] Cost benefits: fixed costs are lowered through sharing of facilities.

Further to this close co-operation between professions produces time and cost benefits which may be passed on to the client.

[c] Communication: Working together as a team provides better understanding and complements relative strengths

[d] Growth for the professions in future will derive from greater specialisation and an integrated practice is a means to achieve this

[e] The professions are essentially selling knowledge, service is most important. The South African business community is not large thus it is important to establish a competitive advantage. If a service is offered/not offered by another it constitutes an advantage.

[f] When an accountant refers a client to an attorney, or vice versa, such client may not be of equal importance to the referee and thus may not receive the same degree of attention. A multidisciplinary practice would eliminate this problem.

With regard to the above it is important to establish the reasons for agreement or otherwise and any further perceived advantages both in respect of the profession and client.

3. <u>Disadvantages/Problems of an integrated practice.</u>

[a] A different culture exists in each profession

[b] A law firm consists of individuals and the standard of work depends on the individual rather than the firm

[c] Objectivity: A client would rather have recourse to separate firms which to some degree exert a check on the quality of each other's work

[d] Attorneys have a larger client base than accountants by the nature of their relationship to the client

[e] Attorneys in an integrated environment would lose their competitive "cutting edge"

[f] Hierarchy is not an element in law firms in the manner that it exists in accounting firms, which may present problems of structural integration

[g] There is not sufficient need presently and in the foreseeable future to change the status quo

[h] Confidentiality: The attorney and client privilege does not exist in the same manner as between an accountant and his client. Integration therefore may prejudice the protection afforded to the attorney and client relationship.

4. Opinions so far expressed may be divided into the following views with regard to integration.

[a] Insufficient synergy to provide any benefits from integration

[b] A need for an existing practice to purchase inhouse skills

[c] The formation of project teams consisting of practitioners from each profession to deal with particular problems on an ad hoc basis

[d] The formation of an association between firms to co-operate and share skills as the need arises while continuing their distinct practices

[e] The formation of a fully integrated Multidisciplinary Practice as a distinct entity

It is necessary to determine the weight of opinion in support of such alternatives. With regard to alternative [e] opinion in respect of the proposed legal form of such entity [partnership, incorporated company etc] is necessary.

APPENDIX 3

SAMPLE OF INFORMATION REQUESTED IN INTERNATIONAL CORRESPONDENCE

[1] Do such forms of practice exist in England/America/Australia?

[2] If so, in what form do they exist, eg a merger between a law firm and an accounting firm to form a fully integrated Multidisciplinary Practice or interdisciplinary teams formed on an ad hoc basis for specific projects, etcetera.

[3] Copies of all relevant legislation, rules and ethical constraints governing such practices.

[4] The particular benefits both to the public and the profession of a Multidisciplinary Practice.

[5] Any disadvantages, both actual and perceived, of a Multidisciplinary Practice.

[6] Whether, to your knowledge, such form of practice exists elsewhere in the world?

[7] Any other information which may be relevant to this research.

APPENDIX 4.

LIST OF DATABASES SEARCHED FOR LITERARY REFERENCE TO

MULTIDISCIPLINARY PRACTICE

Magazine Index - General Interest

National Criminal Justice Reference Service

United States National Technical Information Service

ABI/Inform

PAIS International

Management Contents

Foreign Trade & Econ Abstracts

Harvard Business Review

Economic Literature Index

Trade and Industry Index

Health Planning and Administration

Industry Data Sources

FINIS; Financial Industry Information

National Newspaper Index

Standard & Poors Daily News

Standard & Poors News

Newsearch WK

Canadian Business & Current Affairs

Moody's Corporate News-U.S.

PTS RBN

McGraw-Hill Business Backgrounder

Child Abuse and Neglect

Cis [Congressional Information Service]

Legal Resource Index

Criminal Justice Periodical Index

Patlaw

Laborlaw

Inspec